Office-Supreme Court, U.S.
FILED
OCT 20 1981
ALEXANDER L. STEVAS,
CLERK

JOINT APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

* * *

NO. 80-1538

* * *

JAMES PLYLER, Et Al.
V.
J. AND R. DOE, Et Al.

* * *

NO. 80-1934

* * *

STATE OF TEXAS, Et Al.
V.
CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN, et.al.

VOLUME D

TABLE OF CONTENTS

Page

Records of Proceedings Trial on the Merits:

Testimony of Mr. Alton Bowen 1

Testimony of Mr. Raul Besteiro 1

Testimony of Robby Collins 32

Testimony of Mr. Raymon Bynum 43

Testimony of Cissy Salinas 51

Testimony of Edward L. Cowens 53

Testimony of Covey T. Oliver 56

Testimony of Mr. Elpidio Lizcano 58

Testimony of Mr. William Chambers 60

Testimony of Dr. Robert Tipton 62

Testimony of Edmund T. Emmer 71

Testimony of Mr. Mark Flolid 73

Testimony of James Pete Williams 76

Testimony of Norma Villarreal 87

Testimony of Lon C. Wheeler 89

Testimony of Michael Say 90

Testimony of Tony Polumbo 93

Testimony of James L. Duderstadt 94

Testimony of Esteven Flores 102

Testimony of Albert Cortez 107

March 6, 1980
VOLUME XVII

[page 1271]

TESTIMONY OF MR. ALTON BOWEN

DIRECT EXAMINATION

[page 1271]

Q. (By Mr. Schey) Mr. Bowen, thank you for coming here from Austin. My name is Peter Schey and I think we met at your deposition a few months back.

Could you please state your current position with the Texas Educational Agency?

A. I am Commissioner of Education

[page 1324]

Q. Well, if it was so clear, why was it necessary to issue guidelines a month ago?

A. We issue guidelines and make policy decisions on all laws that are passed by the Legislature. Sometimes we only track the law, but the schools were calling us repeatedly about what would a child have to have in order to be considered a legal alien. We gave them the best information that I.N.S. gave us. Subsequently as a result of continuing calls we updated the list. I gave them in '75 all that I.N.S. gave us.

[page 1360]

TESTIMONY OF MR. RAUL BESTEIRO

Q. (By Ms. Dasher) Mr. Besteiro, I was trained in French

and so I have a little trouble with the "R"; could you say your name again for me?

A. Besteiro.

Q. I don't think I am going to make it.

What is your present occupation?

A. I am Superintendent of Schools in the Brownsville Independent School District.

Q. How long have you been involved in that particular occupation?

A. As Superintendent I have been there over three years. I started on December 1st three years ago. So I am on my fourth year.

I have been with the District 22 years, starting as a biology teacher and moving through the ranks to assistant principal, principal, deputy superinendent and now superintendent.

Q. What has been over the years your connection? What are your roots as far as Brownsville goes?

A. I was born and raised in Brownsville. I have lived in Brownsville all my life. I left Brownsville only for the period of time to attend the University of Texas, to get my teacher's degree and then to get my master's degree and I returned to Brownsville and started work as a member of the Brownsville Independent School District 22 years ago which is exactly half of my life.

Q. Why are you working for the Brownsville School District?

A. Well, I love education and I love to work with children and I enjoy the work I do. So that's why I am working for the Brownsville Independent School District.

Q. Is your family from Brownsville?

A. My family is from Brownsville. My great-grandfather is one of the originators of the old, old community there. That's where our roots are.

Q. Have you been active at all in Brownsville city affairs? Has your family been involved in that kind of thing?

A. Yes. We go back a long way.

I have been active in all walks of public affairs in Brownsville as far as service organizations, as far as working with different organizations in the community, Community Fund, Red Cross, Boy Scouts.

I am the head of the Salvation Army unit at the present time. I belong to the Kiwanis Club. I have been very active in Kiwanis; Independent Governor for our division. I follow a long line of uncles and aunts that are active in the community. All of my uncles on my mother's side of the family have always been very active as far as community affairs are concerned.

One of my uncles is Judge Reynaldo Garza. Another was head of the Navigation District for close to 20 years.

So the family has been real active in community affairs.

Q. Is Brownsville near a Mexican border community?

A. Yes. Brownsville borders right on the Rio Grande River, with Matamoras, Mexico across the river. The only thing between them is the body of water between the two towns.

Q. Are they considered as sister cities?

A. Yes, we are. We are connected by two international bridges and people come back and forth all day long. Just like one main street.

Q. Has that particular proximity caused you any problems as the Superintendent of the Brownsville Independent School District?

A. Up to this point the only problem it does cause is that it enables people to have real easy access into the part of downtown Brownsville and into the community of Brownsville because, sitting right on the river, people are always trying to come across to work in Brownsville and to live in Brownsville.

MR. SCHEY: I am going to object on the ground that he is speculating as to why people come across.

THE COURT: Overruled.

Q. Have you, during the last few years, had occasion to testify in front of the United States Congress?

A. Yes. Not the Congress itself, but a Senate subcommittee in connection with a bill that Senator Bensen (sic) has introduced to try and help school districts like Brownsville with the impact that we have received from legal alien children that are in our schools and Senator Bensen (sic) at the present time has a bill pending which would enable schools like Brownsville to receive a thousand dollars a head for legal alien children to build buildings. That's the main purpose

of the bill. It has been introduced three times and we have been trying for three years to get it passed but as of yet we haven't gotten any money from it. This is to enable us to construct buildings to take care of the impact we are receiving from over 1200 children in this year already that have come there legally and are in our school.

Q. Are the bills I have handed you the bills you are referring to?

A. Yes.

MS. DASHER: I would ask that those be admitted, Your Honor.

THE COURT: They are admitted.

Q. MR. BESTEIRO, would you tell the Court a little bit about what is involved in being the Superintendent of a school district and what financial burdens you face, particularly in Brownsville? Limit your testimony only to your experience in Brownsville.

A. Yes, ma'am. Being Superintendent of the Brownsville schools involves doing a little bit of everything, and what I mean by that is that we have to be aware of the needs of the personnel that work in the district, the needs of the children that go to school in our district and how we go about pulling together to give our children and our community the best education possible.

We are not a wealthy district. In fact, in the State of Texas we are very low, but we are No. 18 in size and so we are a large district with very little wealth.

The number of children we have in our district compared to the community as a whole is enormous

because this year we have over 25,600 children and, so, our big enrollment which is a thousand more than in the previous year for the same date. In order to keep up with this type of growth, we have to do a lot of planning and do a lot of earmarking of money so that we can provide the facilities and the room to educate these children.

Together with this, we have a teaching staff that has to operate in schools that are old. In the elementary division of our school system, 50 per cent of the rooms are portable. Some of those rooms go back to World War II. We haven't been able to do away with the portable buildings because every room is being used and we have teachers who do a tremendous job, but they enjoy eating and living decently and we have to provide a decent wage for them so that they will continue to teach the children under the conditions we have to work in, which is portable buildings, no air conditioning, and so we have to take away from the building program and keep on using these portable rooms to meet the requirements of the school district.

Q. How many legal aliens or commuter aliens have you admitted just this year?

A. Through February we had admitted from Mexico a little bit over 1200. I am thinking it's 1262. I think it's somewhere around there through February.

[page 1367]

A. This is approximate. Our budget runs about $35 million. $6 million comes from local board taxation. $3 million roughly comes from Title I monies for migrant and for federal programs, and the rest is state money that comes in from the State of Texas.

Q. And that's what?

A. Roughly 25.5 million.

Q. 25 and a half million?

[page 1368]

Q. What is your situation as far as classroom buildings goes?

A. Well, we try to build buildings to accommodate the needs of the problem that we face is in not knowing the exact amount of children that are coming in on a given year. We try to anticipate on a five year past history of the school district and we try to build permanent buildings and at the same time we are always constructing portable buildings and within a period of 14 to 15 days we put a portable building and supply it for an overloaded classroom. I try to give my teachers a break by not going over 35 students. When it goes to 39 or 40 students, we build a classroom to break that up, hire another teacher, and give the students a better atmosphere.

Q. Are you at capacity at the moment?

A. Yes. We are above capacity. At Skinner Elementary School I had a report that I had 41 children in a room and we will be building a new portable building starting probably next week.

Q. Are you familiar at all with what the situation is with the Matamoras School?

A. By observation I am familiar, since I go to Matamoras quite often.

MR. SCHEY: I would object to that without an explanation of what the relevance is and also laying a foundation as the basis for his knowledge.

MS. DASHER: I believe I started to lay a foundation. I asked him, "Are you familiar with the Matamoras School?"

THE COURT: You may proceed.

Q. And you said you were by personal observation and by what else?

A. By the fact that I have relatives and friends that live in Matamoras and, since I am interested in education, I get a lot of information about their educational facilities there. They are trying to do the best job they know how. They are limited in their capacity to build buildings and they have one factor that we don't have and that is they can limit the number of students that come into their school, and that means that, once they are full, they say, "We have no more room." So there is a tremendous amount of children that are not going to school because of lack of space in the schools.

Q. Have you assisted them in any way with their needs?

A. Yes. We try to help them out as much as possible in the fact that they are always coming over to see if we have school desks that we have discarded that they could put to use or to try to buy some desks to better their facilities.

Q. We are sort of skipping around with you a little bit, Mr. Besteiro, but what is the feeling of your board and your community now with respect to bond issues?

A. Our community at the present time is totally against any kind of bond issue. Only about three years ago we had tremendous evidence in the community of the fact that there was a devaluation of the Mexican peso and, accordingly, more alients have been coming over from Mexico. Secondly, with inflation, people are al-

ways telling us, "Taxes are too high," and thirdly, the fact that people are very well aware of the number of children that are being allowed in from Mexico and a lot of the people are saying, "Why should we have bond issues to build schools for children from Mexico?"

[page 1372]

Q. About how many children, if you know, have you refused this year on the basis of that provision that they were not documented?

A. The count that my attendance officer gave me was over 313 families.

Q. That's just for this year?

A. Yes.

THE COURT: 1980?

Q. From September of '79 to the present, sir.

Q. Does the statute that we are talking about in this litigation, 2103-1, in its exclusion of undocumented children benefit Brownsville?

A. I am sorry. Would you repeat that?

Q. Does the exclusion of undocumented children benefit Brownsville in any way?

A. Yes. It enables us to have an educational component that we can cope with right now.

Q. What would Brownsville need to accommodate an influx of approximately another one to two thousand students?

A. An elementary school, and we are talking about an elementary school that would house approximately those students which would cost us a million and a half dollars. We are at the present time constructing one and this would take care of approximately 800 elementary children.

If we are talking about a secondary facility, it's a lot more expensive because in a secondary facility you have libraries and special services like music, athletics and so on. We would be talking about 2,000 children about probably four or five million dollars.

Q. So if money were available to you to build new buildings, you would be all right? Is that an accurate statement?

A. A. That's a very accurate point, yes. One of the biggest problems we have is trying to build buildings and what I am afraid of is that we are using up money for enrichment of our children's educaiton and we are putting it into buildings because you need to have a space to put the children in and I don't think it's fair in my district to be robbed of enrichment because of the tremendous influx we have of illegal aliens coming along that we can't keep up with.

Q. You said you had 400 families this year who had been refused admission into your schools. Do you mean 400 children or 400 families?

MR. SCHEY: I object. He said 313.

MS. DASHER: Well, whatever he said.

A. The figure that was given by my attendance officer was 313 and he is talking about adults that came in trying to place their children. 313 calls, in other words.

Q. What kind of enrichment problems do you feel have been diluted during this period of increased enrollment due to legal aliens?

A. Well, the fact that we have to really thin down on all our material. The fact that the equipment that we have has got to be limited so that every penny can go into the construction end of the school business. That is limiting the ability of our teachers for better materials to work with the children.

Q. What percentage of your buildings right now are temporary facilities?

A. At the elementary level, 50 per cent of my classrooms are portable, portable temporary facilities, if you call a portable building that lasts for years and years a temporary facility. Portable to us is permanent because we haven't been able to get rid of one. So really it is a permanent facility.

[page 1377]

Q. How do you account for Brownsville being in the position where you are having, I guess you said, 1200 legal Mexican children every year? What is your explanation for that?

A. Well, it's a very simple explanation. People are always trying to better themselves. You can't blame them. And no matter what anybody ever says, there isn't any better country than the United States of America and everybody is going to try and do what is best for their people, and when I say "for their people," I mean for their families, and I never blame people for coming over because it is a much better life for them and so, naturally, the first school they hit is the school district along the border and the towns that have some prosperity along the border, and Brownsville

being a growing community does have a certain amount of prosperity, and those people that are allowed in and have the right to come in, they come in to Brownsville.

Unfortunately, when they do come in to Brownsville, a lot of them don't bring any kind of capital wealth and it takes them a few years to establish a tax base which would be meaningful to the community of Brownsville.

Some of these people may go further up the country, but this is their first stop and sometimes, because of lack of funds, this is as far as they can go.

[page 1382]

Let me ask a question since you brought it up. Do you really think that, if the children in Mexico could go to school in Texas, that they would all come over here to go to school in Texas rather than in Mexico?

A. No. Not all of them. If you want my honest opinion, and this is what I would like to give you, the only concern we have is that we have a certain number that are already in Texas and in our district.

THE COURT: Whose mother and father are here?

A. Are here, but there are a number of children in Mexico, without trying to be an expert of any kind, that are not going to school in Mexico and what is to keep them from seeking an education over here? They have nothing over there. So what is to keep them from seeking an education over here?

THE COURT: Don't they have free public education in Mexico?

A. In a way, but they limit the space and, once they are full, they don't let them in school.

THE COURT: You mean they don't educate everybody in Mexico?

A. No.

THE COURT: Well, I will listen to everything you have to say.

A. As far as numbers are concerned, it would be hard to put a number on it and we hope that this wouldn't be the case. There is no way I can tell the court how many children would come over because I don't think anybody could do that.

THE COURT: Well, I just assume that the children whose parents are in Mexico would go to school in Mexico and what we are talking about in this case is children whose parents had come over to better themselves and whose children are over here.

A. Right, sir.

THE COURT: All right. You understand me and I understand you and I am just now hearing your testimony, but there are some children in Mexico whose parents are in Mexico that you feel would go to school over here if they could? Is that what you want to show, Ms. Dasher?

MS. DASHER: That was one of the impacts, Your Honor, yes.

March 7, 1980
VOLUME XVIII

FURTHER TESTIMONY OF RAUL BESTEIRO

[page 2004]

Q. Mr. Besteiro, in your experience in life in Brownsville, have you had occasion to work with, talk with the illegal immigrant living in Brownsville?

A. On several occasions, yes, I have had the opportunity to talk with illegals living in Brownsville, definitely. I have observed areas where they live. I have talked to them in my office when they have come in – all the way to my office to ask for admittance for their children in our schools. And I feel – I have a compassion for them because I love to take care of the children, but I also have a duty to serve my district.

[page 2012]

Q. How many lawful immigrant children did you testify are currently in your district?

A. Lawful immigrant children.

Q. Children who are legally in the United States.

THE COURT: Do you mean in the district as residents or in the school?

MR. SCHEY: In the school.

A. I think that our figures were in the amount of close to 6,000 children in the schools, but I would like to say that there may have been some that have migrated up the country. We do not have the staff to keep on

checking every child on a yearly basis to see what their status is. I wish we did.

Q. Did you testify yesterday that there were approximately 5,946 that had entered the schools?

A. Yes. Since we started looking at the amount of legal children impact to our district, yes, sir. And that did not include the children that we have brought in this year.

Q. Now you are explaining that to count the number of children coming in, you have not had the time to count the number of children leaving, is that correct? Is that what you said?

A. I just said I don't know how many have left, and I don't want to lead the Court into thinking there are 5,963 children at the present time in the district.

Q. That 5,900 figure, beginning in what year?

A. '72, '73, if I'm not mistaken.

[page 2014]

Q. Would it be fair to state at this point that we really don't know how many lawful alien children are still going to your schools since you don't know how many have graduated, you don't know how many have migrated out -- it would be fair to say that you don't know a figure of how many legal aliens are going to school?

A. It wouldn't be because we figure less than 10 percent have left just on, you know, our observations from principals as to the number of children.

[page 2015]

Q. Now, did you testify in your deposition that you have a tremendous influx of legal alien children, but that quote, "We are not fighting that at all." Do you recall making that statement?

A. We are not fighting that. These children are as legal as you and I are. They have the right to come in. The only thing that I'm fighting is if the federal government allows them into the country, let the federal government pay for the buildings, at least, to house these children, and not our local taxpayers.

Q. That's really a dispute between you and the federal government concerning lawful immigrant children, is it not?

A. That's correct. And the point I'm trying to make to the federal government is that we are impacted just like an Air Force base or installation would impact a community by the number of children they allow to come into the country and hit a school district such as ours. We do not get any impact money for these children whereas if the federal government goes in and puts an installation somewhere, or if they bring in children from Vietnam or the children that came into Dade County in Cuba, everybody has received money to be able to cope with the education of these children. Yet, the children impacted along the border with children that are allowed by the federal government to come in have not received any money. Yet, everybody expects us to keep the best standards for our children without having to finance to do anything with it.

[page 2019]

A. Yes, but at the same time that I'm losing the money from the State, because of average daily attendance I

would not need facilities that I have to be putting a lot of money into and facilities that I have to maintain.

Q. You're saying that even though for every one dollar you put in you get $5 from the State, and you get two or three dollars from the federal government – you're still saying that you would be better off eliminating the State money and federal money that you get for those children just to save the one dollar you're putting in?

MS. DASHER: I just ask that Mr. Schey correct his figures. The federal government's involvement is $3 million. The local is six, so it would be 50 cents from the federal government.

A. The point I would like to make is that a district like ours and the community as the one we have is at the point that they will not vote a bond issue because they don't feel it's fair to be building buildings for children that the federal government is allowing to come in. If we had a normal situation like any normal district of our size that

[page 2026]

A. Yes, and it takes a little bit more time to build permanents because they last a lot longer.

Q. In terms of your buildings, let's stay with that for a moment because I think it is your testimony that that is your major problem, is tht correct?

A. That's correct.

Q. Do you recall stating in your deposition or, excuse me, in your Dallas testimony, Page 749, I quote, "I'm telling my board that we need five years just to build

buildings to catch up with where we should be"? Does that remain true today?

A. That remains true today, that is correct.

Q. Can you attribute any of that problem to the existence of undocumented aliens in the United States today?

A. I'm not talking about undocumented, I'm just talking about my present condition is five years right now with what I have.

Q. To what extent do you believe your present condition is a result of the structure of the funding of education in the State of Texas as chosen by the Texas Legislature?

A. Well, the State of Texas does not provide funds for permanent construction, and therefore, the local effort has got to be done to do permanent construction.

Q. Do you feel that that's the fault of undocumented children, or is that the fault of the Texas Legislature?

A. I wouldn't want to answer that because I don't think it's either's fault.

Q. Whose fault do you think it is?

A. The people of the State of Texas that vote the legislative people that set the laws, and if that's what they want to do, that's fine.

Q. Have you also testified frequently that 50 percent of your elementary schools are presently portable buildings?

A. That is correct, yes.

Q. Does that remain true today?

A. That is true today and that's – with that point in mind, when I tell my board what it would take to upgrade our district, that is one of the points that I'm making, because some of our portable buildings that we have are quite old. They're from World War I in some cases and from World War II in others, from the Air Force base that there used to be at Kingsville. They're in very poor condition.

Q. What is – given the construction base problems that you have, what is the present student-teacher ratio in –

A. In the district right now the present student-teacher ratio overall is about 30 to one in our district.

Q. What is required by the State of Texas?

A. The State of Texas requires 18 to one and 19 to one in the lower level grades.

THE COURT: Just a moment. Does that mean the state law is that the local school district must have at least 18 children per teacher?

THE WITNESS: No, that that should be the maximum a teacher should be working with in the kindergarten, first, second, third, and we are working with 30.

THE COURT: Just a moment. In kindergarten, elementary?

THE WITNESS: Kindergarten through the third, elementary, yes, sir.

THE COURT: All right. Thank you. Go ahead, please.

Q. Did you testify in the Dallas case that despite

[page 2039]

A. A little bit, yes. That's equalization.

Q. Can you tell us what equalization has done for you?

A. It has given us an additional amount of money, but not enough to be equal to the rest of the state. I think it's been unfair to districts like mine not to receive enough money to make – have an equal education as everybody else in the State of Texas. We can't really go out and say we don't want what they give us because we're so desperate that we need to take it, but we still don't have an equal education for our children as other parts of the state.

Q. Do you recall stating in your deposition, I quote, Page 36, Lines 14 through 17, "If you go back to equalization, which was going to solve all of the ills of districts like mine, we're more unequal today than we've ever been"? Do you recall making that statement?

A. Yes, sure.

Q. Do you think the reason for your making that statement is the presence of undocumented people in the State of Texas, or do you think it's the way the people of the State of Texas have chosen to structure their school financing in the state?

A. It has nothing to do with undocumented children. Equalization is how the structure on funding schools is.

Q. Who made that decision?

A. That is up to the legislative body. It's not up to us.

Q. Did you also state in your deposition on Page 36, 37, that, "If the State would come up with a good formula to take care of all the districts alike, it would be beautiful"?

A. Certainly.

Q. Talking about the impact of immigrant children, documented or undocumented, do you recall making the statement in your deposition on Page 52, "There are districts that are next to me that are terribly wealthy that could take on the whole world and not be hurt"?

A. That is – yes, I recall making the statement – because of the fact that I feel so bad for our children in our district that we have to spread out such a thing slice of bread where a district eight miles or twenty miles away from me has got no problem whatsoever and holds all the wealth that should rightfully belong to the Brownsville School District because of – I'd like to explain this.

[page 2045]

Q. But these are the same people who you're saying Brownsville will not pass a bond issue because they don't want to pay to educate the children of these legal immigrants? Isn't that what you've testified to?

A. That's right, because they bring no taxable wealth. I've also said it takes them four or five years to establish a tax base.

Q. The people of Brownsville don't want to improve the schools because these are Mexican children?

A. No. You said that, and I don't think the people of Brownsville will appreciate that because we are human beings. I don't appreciate it myself because I

don't think it's fair to our community to have something like that said. I hope somebody quotes you. They all know exactly the attitude of what you think of the people of Brownsville because I'm from Brownsville and I don't appreciate that one bit. Our people are working hard to maintain our schools. I would like to tell you this, in fact, because we pay a two-dollar rate on 65 percent value, and nobody in the Rio Grande area has a $2 rate -- and I resent that, Your Honor.

Q. Let's discuss what you said on Page 36, lines 5 through 8, quote, "Our people are not about to vote a bond issue because of the fact that they feel that they're voting bonds to house children that are coming from Mexico." What did you mean by that statement?

A. Exactly what the statement says. If a person comes in today and a thousand people walk in today and I need a million and a half dollar school, I'm not about to get them to vote them in.

Q. Why is that, just because they're from Mexico?

A. They don't think they should have to vote a bond issue. They're paying enough taxes as they are.

Q. Didn't you tell us that part of the good laborers doing the construction for you --

A. They're not doing it for me. You've got that completely wrong. I don't do construction.

Q. Who are they doing that for?

A. For people in the community. You better get you facts straight.

Q. Who are the people that they're building for?

A. People that are building different buildings. All I said is that we are getting people and they are trying to better themselves. I did make a statement a little while ago that the people that come in – within a few years you can see the improvement in their neighborhoods.

Q. Is there any other reason they won't vote a bond issue other than the reason that these children are lawful alien children from Mexico?

A. There may be a lot of reasons, but this is one of the main reasons where the community says, "Why should we put on another burden and up the – increase the value of our property and increase the values, you know – or increase the tax? We can't go over the $2 rate." The only thing we have left is to go from 65 percent of value to a hundred percent of value. This would, I feel, cause a tremendous burden on a lot of the people because our community is not a rich community. A lot of our people that live in that community that own small pieces of property – it would be a burden to them to have to pay that kind of taxation.

Q. What you're telling us is that it would be politically unwise for you at this time to propose the issuance of a new bond, is that what you're saying?

A. Definitely.

Q. Is that why you haven't proposed a new bond?

A. That is correct. The only way that I can propose a bond to my community is by working the way we have been working. I work the master plan.

Q. When was the last bond issue?

A. 1971.

Q. How much money?

A. I would say roughly about seven or eight million dollars.

Q. What did that go to?

A. That went into building two high schools and two elementary schools.

Q. When was that bond issue?

A. And additions to existing elementary schools.

Q. Prior to that time – when was the bond issue prior to 1971?

A. Probably in 1965 or '64. I don't want to be pinpointed.

Q. Were there also bond issues in the 1950s?

A. Some bond issues in the '50s were defeated. We had one in '45. We had some, maybe '54 or somewhere around in there.

[page 2050]

Q. You think the people they rent homes from are paying property taxes?

A. Sure they are.

Q. Do you–

A. Let me finish my statement. When you're talking about a home, you're giving this Court the impression

of -- to me a home is a nice -- at least a one-bedroom or two-bedroom --

Q. I think this Court is smarter than that, sir.

A. I'm not talking about -- they live in a square as big as where the judge is sitting. They are paying 10 or 12 dollars a month to live there, and that doesn't bring too much tax to the district.

Q. How many people do you know that are paying $10 a month rent, sir?

A. I could probably point out at least 20 within a five-block area of where my district office is.

Q. Is that the worst area in town?

A. Oh, no.

Q. There is a worse area?

A. Yes.

[page 2053]

Q. I'm not interested in teachers, so we don't have to spend time with that.

Did you testify also that there's approximately 87 percent Mexican-American students in your school district?

A. Approximately, yes, give or take a few.

Q. Let's just touch on the question of bilingual teachers for a moment.

A. Okay.

Q. When you were asked the question on Page 19, Line 22: "Is there a shortage of bilingual teachers," a shortage of bilingual teachers, you said, quote, "Not really," is that correct?

A. Not for our district, no, sir.

Qoncerning the problem with enrolling undocumented children for a moment, you said on Page 20, Lines 9 through 12, and I quote,"If I had enough buildings and if my teachers are getting the fair pay, I wouldn't have any problems." Does that essentially remain true today?

[page 2060]

You mentioned yesterday that -- I believe you mentioned yesterday that the problem you had, in exchange with the judge, that there's a real problem with commuters coming from -- children who, I guess their parents live in Mexico, but the children enter the United States to go to school, is that correct? You were explaining to the judge.

A. What I was trying to put together was that the close proximity of Matamoros to Brownsville and the relationship of families on both sides of the river puts us in a very unique position about the fact that there's a lot of families that would want to send their children to live with relatives and establish residence with a relative and go to our schools because we can furnish a better educational component, and they can learn English and things that they're interested in.

Q. Let me ask you this: Isn't that really a problem of how effectively you're able to implement the residency requirements? Isn't that really the question there, it's a question of residence?

A. We would spend all our time going to court to try to prove that they were there for the sole purpose of education.

[page 2066]

A. I don't think this. I ask and my attendance officers ask, you know, for any kind of document that would enable us to allow them to come into school.

Q. Let's say the person says, "I just have no document, Mr. Besterio, I wish I did; I've been down to the Immigration Service, and they tell me until I get a marriage certificate from the Yucatan that they're not going to give me anything to show."

Now, does that person have any rights to procedural due process?

A. No.

Q. Do you recall making this statement in your Dallas transcript at Page 755, Lines 11 through 20, "In my office alone, not in my attendance office," people coming to you, "when they come to my office, they really, you know, they're really going all the way"? I guess you mean they're going around the attendance officer and they have come to the superintendant.

"They're really going all the way, and I've got to be really obnoxious to them and tell them that I give them two minutes to get out or I'm going to call the border patrol because they come in demanding, and I don't think they have any right to demand anything because they shouldn't be in this country. That's the law of this country. They have no business here."

Do you recall making that statement?

A. Certainly.

Q. Is that a true statement?

A. Surely is. If I went to Mexico and I didn't have any papers, I'd be in jail.

Q. Do you also recall making the following statement at your deposition, Page 32, Line 13, in response to the question: Have you ever had occasion to personally interview undocumented families who attempt to enroll their children? Your response was, "Yes, Ma'am. There have been a few that come to my office demanding to go to school, and I have had occasion to ask them, you know, the reason that they're coming because they've gotten upset, my attendance officer has not allowed people in school."

The next question was: As a result of these interviews -- meaning with yourself -- do you have reason to believe that most undocumented alien children make their own decisions? You said, "My interview with them has been short and simple. I give them five munutes to leave my office or I will call the authorities because they're breaking the law, and I'm a firm believer in the law."

When you were asked what authorities you would call, you said, "I would call the Border Patrol, which is their responsibility to keep illegal aliens out of the country."

Were those true statements that you made at your deposition?

A. Sure.

Q. Is that what you call procedural due process?

A. Well, I don't see why I have to give anybody procedural due process that has no right.

Q. Okay. I have no further questions on that issue.

I'd like to go back to something you were testifying to yesterday which I think is significant in this case. I bleieve you testified that there were 313 persons who had applied to go to school between August 1979 or September 1979 and the present who you and your attendance officer believed were undocumented aliens, is that –

MS. DASHER: Mr. Schey, I object to the form of the question. The testimony was 313 families, not 313 children.

THE COURT: Correct that, Mr. Schey.

[page 2072]

what the real impact will be to the Brownsville School District"?

Did you make–

A. That's correct.

Q. Is that statement an accurate statement?

A. Yes, sir.

Q. Do you recall stating in your deposition at Page 54, Lines 5 through 6, that other than those 300 families who try to enroll, quote, "I could not tell you how many more are in and around the district," unquote?

A. That is also correct. I'd be lying to you – I don't know how many there are.

Q. Have you ever spoken with an undocumented alien family who indicated that their children were the ones

who had made the decision to come to the United States?

A. To answer your question just like you stated it, no, I have never spoken to one that indicated that their children made the decision because the Mexican people make decisions for their children, not children making decisions for themselves.

Q. Have you ever run into children who have come across without their parents in order to obtain an education and left their parents in Mexico, undocumented?

A. No, I have not.

Q. Do you recall making this statement, which I think is very important, in front of the Texas Civil Rights Commission, Page 113, Lines 1 through 4, and that is an exhibit in this case, quote, "Well, these people," and you're referring to the undocumented children, "Well, these people that we are rejecting are going to stay in this country, and if we don't educate them, we are really hurting them, but at the same time they're illegal. Something has got to be done." Do you recall making that statement?

A. Yes, I think I do.

Q. Do you still –

A. I really meant that because it's a statement that sort of hits me in two directions. The country has got to look at this seriously and has got to make a decision. We can no longer just say it's going to go away.

Q. Do you also recall making the statement along the same lines at your deposition, Page 42, concerning illiterate children, that they would be a burden on

society, "a real burden on society if we didn't make some attempt to educate them," unquote?

A. Well, I think my complete statement was – you only took a fraction of it – was that to be an educator and if nothing is going to be done about people being here illegally, and if they are going to continue to come in, in the future there will be a society of illiterate children, and I sure as heck don't want to be one to be blamed because we didn't have the foresight to do something. Then, on the other hand, I'm sitting with a district that doesn't have the funds to take care of the present needs.

Q. Or alternatively, who don't want to vote another bond issue because these children come from Mexico, is that right?

A. Well, not as such. It doesn't want to vote a bond issue because they are taxed to the hilt, and they feel it's not their responsibility for the people that are being allowed into this country.

You know – I don't know. I've got mixed emotions. I think I should be fighting the federal government and try real hard –

THE COURT: You're doing very well.

Q. I just have a couple more questions, sir, and I appreciate the time you're taking.

[page 2081]

Q. What you're saying is that you don't have the staff to engage in that kind of being tied up in court?

A. Right. It would be real hard to prove that somebody came over for the purpose of going to school. You'd

have to find out what their parents are doing. Now, if their parents are in Mexico, just to give you an example, and they are not hurting, they are well off, and they just sent that child to stay in the United States for no reason whatsoever, then, you know, you could build a case. But who is going to have the time to be doing this?

[page 2084]

THE COURT: Just for the record, you are a Mexican-American?

THE WITNESS: Yes, sir.

TESTIMONY OF ROBBY COLLINS

[2094]

Q. Mr. Collins, where are you currently employed?

A. Dallas Independent School District.

Q. What is your current job position with the District?

A. Deputy Associate Superintendent for Management.

[page 2096]

Q. Approximately how much of the Dallas funding is obtained from strictly local sources?

A. Well, I break the budget down into what we call state and local sources, which are basically operating money. We're currently operating with a $215 million budget of which about 42 percent of that is paid from state sources. The local ad valorem taxpayers finance the balance.

We also operate on about a $23 million federal budget, which are categorical targeted funds for the needs of special populations of our schools.

[page 2105]

Q. Could you switch federal funding currently received by Dallas Independent School District to aid in absorbing a sudden increase in students?

A. Absolutely not. That would result in a forfeiture of such funds.

[page 2115]

Q. How much are you spending on special education right now?

A. It varies from pupil to pupil. What the law requires is for us to provide an appropriate education for handicapped children aged three to 21. We have circumstances where we have some physically multi-handicapped children that we're paying upwards of 20 to 10,000 dollars a year to serve one child. We have others who are in the mostly disturbed and other type of historically standard special education classes that are about a four-to-one cost to the regular program. We're not sure, after we finish our child find program, ultimately what this law will mean to us. It's a very inadequately funded program that is putting a tremendous burden on the resources of most of the school districts. This is not just Dallas, this is statewide.

[page 2120]

Q. Is the Dallas District able to serve all students who qualify for bilingual education?

A. No sir. We are different than many of the other districts in the state in that by our desegregation order we offer bilingual offerings in K through 5, whereas the rest of the state has mandated the kindergarten through the third grade. We currently have in the neighborhood of in excess of 8,000 children that we have identified as limited ability English speaking students, but due to the lack of qualified bilingual teachers, we have some 25 or 2600 who are only getting English as a second language for purposes of instruction simply because the bilingual teachers are not available. Therefore, we're not entitled for the state aid since we do not offer a full program.

March 10, 1980
VOLUME XIX

[page 2142]

ROBBY COLLINS,

the witness on the stand at the time of recess, resumed the stand and testified further upon his oath as follows:

CROSS EXAMINATION

By Mr. Schey

Q. Mr. Collins, could you tell us was there a declining enrollment in Dallas in 1977? I just recall from reading the press around September of 1979 – I remember while I was in town seeing about a 5,000-pupil decrease in enrollment. Do you know, was that sustained into the fall semester of 1979 or what was the decrease in enrollment for Dallas schools?

A. Our school district historically since 1970 has suffered an annual 3,000 to 5,000 annual student decline.

Q. Was that true in 1979 again?

A. Yes.

Q. What is the cost decrease to your total budget upon experiencing such a three to 5,000-pupil decrease or in other words, how much does it cost approximately or what is the total cost just to your local funds, not considering the state money that you get? What is the local cost of educating

[page 2153]

best five-week average of the six six weeks. They give you a little benefit of the doubt there because of seasonal enrollments.

Q. So it just means you are able to look at your highest enrollment basically and get reimbursement based on those?

A. This was primarily to help the rural and Valley districts in order to peak out their enrollments some time after the agricultural season ended.

Q. Just to clarify, if you were to anticipate or if you were to find out in the first week of May that as a result of a court order issued in this court you were going to have to enroll an additional 3,000 students you would then project that, add that to your ADA for 1980-'81 and seek those additional funds from the legislature, as I understand it? You would not have to actually have the bodies there in school before you began to seek reimbursement?

A. We would do two things: One, we would amend our average daily attendance projection for the ensuing school year with the Texas Education Agency.

Q. That would be for 1980-'81?

A. That's correct. The second thing we would have to do is to substantially amend our local budget in

[page 2156]

Q. Do you have any data as to how many of these children were excluded from Dallas Independent School District when 21.031 was enacted but who were going to school at the time of its enactment?

A. 21.031 upon its enactment did not alter the policies of the Dallas Independent School District. They had been in effect for some time.

Q. I see. What you are saying is Dallas was excluding undocumented children just based on its own internal policy prior to the implementation of 21.031?

A. Yes. Those attendance policies have been established over the last 20 years, particularly in light of desegregation litigation.

For instance, the question was raised as to why we never permitted tuition. Tuition payments to the Dallas Independent School District was part of the prime case brought in 1961 in the desegregation area.

Q. Now, do you recall when the Dallas Independent School District first began excluding children based on their alienage?

A. To the best of my knowledge for the last 20 years this has been consistent with our policy. I am not advised of the details of it.

[page 2160]

A. No.

Q. What is the student-teacher ratio in the K through three, kindergarten through third grade?

A. I believe with kindergarten 1 to 25; first grade, 1 to 24 or 1 to 22; third grade I believe is 1 to 24.

Q. Would you state those again?

A. I believe kindergarten is 1 to 25 with supportive teacher aide assistance. I believe first grade on the average is 1 to 22. Second grade is 1 to 24.

These are averages and in each school the principal has the latitude of plus or minus five students.

Q. How much would it take away from that educational process if your student-teacher ratio went up in many, many classrooms from 1 to 27 to 1 to 29 or 30? Would that really substantially -- do you feel it is better to not have it go up from 1 to 27 to 1 to 30 and to keep children out of school or do you feel it better to put some kids in school and have it go from 1 to 27 up to about 1 to 30 if that could be arranged?

A. The research on achievement does not bear out significant increases or decreases in student

[page 2177]

Q. You mentioned earlier that there are about 2500 students with a limited English deficiency who are not receiving bilingual training at the present time?

A. They are not receiving any full bilingual program because of the shortage of certified teachers. They are receiving ESL and any other assistance that we are able to provide within our limited language resources.

Q. Do you utilize teacher aides?

A. Yes, sir.

Q. ESL programs?

A. Yes, sir. Volunteers, any other efforts that we can use to try to get assistance to the children.

Q. Do you find generally that that is an acceptable approach, to use teacher aides and volunteers?

A. I discussed this last Thursday with three of our bilingual professionals and they all contend that while the services are the best we can provide that nothing is as effective as a full bilingual program.

For instance, ESL is one component of a full bilingual program and in addition an additional 25 dollars per child does not flow from the State unless you have a state licensed teacher through the certification program.

[page 2179]

Q. Have you had the opportunity to evaluate the impact on students of not going to school during any phase – I note that you have been in education for a good number of years now at various levels, as a teacher, as an administrator and now as a finance expert. Do you have any – based on all that experience do you have an ability to evaluate the impact of children not going to school whatsoever?

A. The entire system of public education is designed to give all children of all people an opportunity to participate in the mainstream. As a professional educator I have dedicated my life to trying to provide the resources and the institutions to do this. I can't sit here

and tell anyone that a child is better off not going to school. All children of all people of all nations are better off providing a full public education to make children literate and functioning citizens as a matter of philosophy.

I would have to hasten to add that I also work in the area of finance which means managing scarce finite resources in an area of totally unlimited need in terms of educational opportunity. Somewhere we have to make values as to where we place our priorities and place our decisions.

This has never been in my opinion an educationally centered lawsuit. It has simply been one dealing with the scarcity of resources in an educational environment totally with unlimited needs and someone has to operate within it.

[page 2181]

empty classrooms in Dallas right now?

A. I am probably aware there are a couple of hundred empty classrooms in Dallas right now. We have six elementary schools that have less than 87 children under the court order and they are getting smaller every year.

MR. SCHEY: No further questions, Your Honor.

MR. CAMPOS: I would like to ask a couple of questions.

CROSS EXAMINATION

By Mr. Campos

Q. First of all, for the record, Mr. Collins, you testified that there were approximately $3 million free fund balance at the end of this last fiscal year, is that basically correct?

A. Of available money to pour back into the building of the ensuing school year budget.

Q. Yes. Free fund balance. Now, I would like you to look in a yellow book that you have got in front of you to page four. Could you please state what the free fund balance indicated thereon is?

A. Projection is $9 million – six million for the '79-'80 school year.

Q. Six million what? Give the whole number.

A. $6,055,000.

Q. Okay. Right on that same page doesn't it give a sum for the year preceding?

A. Yes. Nine million.

Q. Can you give the whole number?

A. 9,400,000.

Q. I would like you to look in the blue book, please. I would like to call your attention to Page 2. Could you also indicate on the record what the free fund balance was at the end of the '77-'78 fiscal

[page 2187]

Q. Is it correct to say that to date the Texas Legislature has not changed its system of financing in education?

A. That's incorrect to say that.

Q. Is it correct to say that they have not changed it so that it is based on the needs of children?

A. I am assuming you are referring to the State as a school finance in the Rodriguez case. The State has made a significant number of improvements in terms of school finance equalization of property poor districts. In 1975 with the passage of House Bill 1126 they put in the first equalization aid to components which was about $75.

In 1977 they added another 132 million. In 1979 they added in excess of 100 million dollars. It amounts to significant relief of property poor districts.

[page 2199]

Q. You mentioned also the average cost per student of around 15 to $1700, is that correct?

A. Seventeen to eighteen hundred.

Q. Now, is that an accurate reflection of what it actually takes to educate a particular child?

A. No. That's an average cost. We have special education. For some kids it takes 10,000. You have in a lot of special programs a reduced class size. These are just averages.

Q. Does it cost more per child to educate low income students?

A. Yes. Historically with the testing we have done children from the low income homes generally need more compensatory aid in reading and math.

Q. Would the same be true of limited English speaking students?

A. Yes. It's generally true of low income families.

Q. To your knowledge has the decline in enrollment come from the least expensive to educate children?

A. Yes. It's generally true of low income families.

Q. To your knowledge has the decline in enrollment come from the least expensive to educate children?

A. Yes. The Anglo population has declined substantially. We were 70 percent Anglo in 1970 and we are currently approximately 30 percent Anglo.

Historically the Anglo middle class student has been less expensive in terms of the special programs required to provide equal opportunity.

Q. Has this decline in enrollment given the Dallas School District a lot of extra money to spend?

A. No. Our student clientele has become more expensive over the last decade in terms of achievement levels and the needs for the various programs as evidenced by our $23 million federal funds.

This has been an effort where local funds were not available to supplement the educational opportunities of children through Title I or Title VII or whatever.

[page 2208]

The second thing is large city schools throughout the United States have been given the challenge of educating the most expensive children with the greatest level of need. I can assure you that if you look at a

suburban school where the majority of children are reading at grade level or above the amount of resources dedicated to keeping that child in that reading level is not anywhere near a child who moves to Dallas or Houston from rural East Texas and is in the eighth grade and reading at a first grade level. The amount of funds that we have to have to bring that child up with the equal education opportunity is just phenomenal, five, six, $700 more per child just to give him an equal opportunity to a child that's reading on grade level. These have not been recognized.

[page 2222]

TESTIMONY OF MR. RAYMON BYNUM

Q. What is your full name?

A. Raymon L. Bynum, no D on Ramon and B-y-n-u-m.

THE COURT: What exhibit were you talking about?

MR. WILSON: Mr. Bynum's vitae, Defendant's 1-6.

MR. CAMPOS: I haven't received a copy of that vitae. I have no objections. I will get it later.

MR. WILSON: Plaintiffs have stipulated as to Mr. Bynum's expertise in the area of State school finance.

THE COURT: All right.

Q. (By Mr. Wilson) Mr. Bynum, are you familiar with State Education Code, Section 21031?

A. Yes, I am.

Q. That is not a microphone. So you are going to have to speak up.

A. Yes, I am.

Q. How does that statute permit the expenditure of State funds on undocumented aliens?

A. That statute speaks to a student being eligible for the benefit of Available School Funds. It works two ways. First, in Chapter 15 of the Education Code there is the requirement to generate Available School Funds that a pupil be in prior year average daily attendance. Therefore, a pupil must be eligible in the prior year, average daily year attendance the prior year to generate.

Over and above that, Section 2048 of the Education Code stipulates that the only use of Available School Funds is to pay the superintendent and teachers, interest on money borrowed to pay superintendents and teachers or to take the scholastic census which is no longer taken. Therefore, the first dollars paid to every teacher in the State of

[page 2226]

Q. Earlier in this trial Dr. Richard Hooker was using Plaintiff's Exhibit 279 and he estimated from that exhibit – I think that is 276. We will turn it in a second. He estimated that at the end of the current biennium the State will have approximately a $600,000 surplus in General Revenues which would be available to educate thse undocumented children if they were admitted into the schools. Do you agree with that statement and if not, why?

A. These State revenues include dedicated trust funds. The General Revenue Fund estimate here is eight thirty-one seventy-nine which was the estimate at the beginning of the biennium and was used to pay the cost – the biennium was included in the comptroller's account and these funds were used to include that.

The same thing is true of each one of these funds. The small amount of money in the Permanent School Fund would simply normally be an income that came on or about the 31st of August that could not be expended because of number date.

I would point out that in these State revenues as I recognize them as coming from the comptroller's report are cash balances and the State is not necessarily on cash in every case. These are cash balances and many cases there would be calls in early September, encumbrances against these and they would not be available for the next biennium.

[page 2228]

As far as an estimate for the six hundred million for the next biennium the comptroller who is Constitutionally required to do the estimating issued an estimate in January of some hundred and twenty-four million.

MR. CAMPOS: I would like to object and ask this court to strike this testimony inasmuch as it is hearsay concerning the estimates of the comptroller.

MR. WILSON: Your Honor, Mr. Bynum is an expert in the area of school finance –

THE COURT: Overruled.

A. He also at that time stated that even though he could not make an accurate estimate, that there might be as much as two hundred million more that would come out of funds that have been budgeted but not expended. The basic problem becomes --that's three hundred twenty-four million against nearly seven hundred million was the net result of all of these last year. So you can see that we are expending during this biennium more than the balances. In other words, other than for the balances, we are operating in a deficit biennium if we did not have balances forward.

Also in that area I am required to make estimates

[page 2230]

Q. Where does that leave that six hundred million surplus that Mr. Hooker was referring to?

A. Number one, I do not feel that we will have six hundred million. If we did, because we are in a deficit this year and because of the part forward, in my role in working with the legislature and furnishing these estimates, I am quite concerned as to whether we will have enough money to add the adequate inflation to the existing program without a tax bill.

THE COURT: Without a what?

THE WITNESS: Tax bill. Increase in State tax.

Q. (By Mr. Wilson) What is the significance of the various fund balances shown on Plaintiff's Exhibit 276 and 279?

A. The Foundation School Program of three million could simply be on August 31 a number receipt like the 30th or 31st. That would be insignificant. The

Available School Fund balance is a cash fund balanc. That was on 8-31-79.

On September 7 we had to draw against that balance $54,447,000 that was owed to school districts. So the actual balance after the September 7th payment was only a million eight hundred thousand in this fund.

So there did not really exist a significant balance. This shows that basically there is a priority on a fund called Foundation School Fund. It has a priority in drawing the treasury. That priority draw is only about seven hundred and twenty million. But this year, for '79-'80, the draw on what is called salary and operation, all the funds after the Available School Funds would be nearly a billion seven hundred million.

So from nine hundred million to a billion dollars of General Revenue will be necessary to pay for the cost of the public schools this year.

Q. Would you look at 279 and explain those fund balances as well?

A. The General Revenue Fund balance was six hundred and twenty million and it was set forth in the comptroller's estimate leading in and it was used to expend – and funds this particular biennium we started September 1, '79 running to August 31, '81. All of these balances were either at a dedicated trust fund balance or were used forward into our present budget.

Q. I don't know if I have ever asked you this and I want to make it clear to the judge. What is your position with the Texas Education Agency?

A. I am deputy commissioner for program administration finance. My duties include the control of State funds and Federal funds and the liaison to legislature and furnish them all their data in working in the area of school finance and school law.

MR. WILSON: You can be seated now. I have no further questions.

THE COURT: Did you start out as a classroom teacher?

[page 2237]

economy is derived primarily from consumer taxes? Would you agree with that statement?

A. "*Direct and indirect, nearly entirely.*"

Q. If you have a greater population, hence greater number of consumers, you would have more tax revenue? Would you agree with that statement?

A. You would have more but it does not show and the figure that I read did not show that those figures kept up with inflation.

Q. Isn't it a fact that the State of Texas has experienced population increases almost twice that of the United States for the last ten years?

A. I am not advised of that or expert on that.

Q. Well, I am taking this information from the Annual Report of the State of Texas. You have been qualified as an expert on State finance. Is your answer still that you are not advised?

A. I am not familiar with the growth in the rest of the states.

Q. Are you aware or are you familiar or advised in any of the economic indicators that go to show the health of the Texas economy at all?

A. I am aware of the movements within the funds and the growths that show the employment and such.

Q. How about economic indicators that show whether or not

[page 2240]

Q. Isn't it true that the majority of the taxes paid by consumers are actually what I term value-based taxes?

A. It's true, except in the State of Texas the sales tax exempts food, clothing and medicine and in times when people are in tight times, there is less sales tax paid because sales tax is on items that are not as necessary.

[page 2265]

If the plaintiffs win this case -- if we could just divide that into your total cost. That would equal $1,000.35. So the total net loss to each U.S. citizen going to school is $70. Is that really the bottom line we are talking about?

A. It would not be the bottom line. It would be the bottom line except that the state law would move the regular program which is about $800 a pupil and there is no way -- the State would have to draw $800 for a hundred and twenty thousand which would be 96 million a year or the State would have to come up

with a hundred and twenty-four million and be in a deficit unless the law was changed.

If the Court so orders that that will be the result to the State of Texas is a hundred and twenty-our will be exceeded by some 68 million dollars using the present law.

Q. I really don't understand what you are saying. What I tried to calculate is what would happen if you don't go back to legislature.

A. We don't have to go back to legislature to fund the regular program but it is a figure that if we add a hundred and twenty thousand it would put

[page 2268]

thousand. I just assume those a hundred twenty thousand students would not be prorated among all the districts? Some might get some of the students, some might not get any and some might get a large number and some might not get but a small amount.

In the way that the public schools are funded in Texas how would that affect them

THE WITNESS: Those schools that got the additional would get from the State for each additional pupil in ADA – no matter how they come in, Your Honor – if the Court so ordered them in they would get $800 per pupil from the State wherever they came. They would not get any of the categorical that had the terminology I used, some certain which means you cannot exceed a total amount set by the legislature. They would receive that and if the hundred and twenty thousand were

[page 2271]

THE COURT: Well, if I admit the students where would the money come from?

THE WITNESS: It would come from local property taxpayers because that's the only source that the school districts have. The large portion of it would come or the local districts would have a diluted educational program. This would be particularly true of where the large numbers come in.

[page 2277]

Q. Is it also true that the amounts of increase in the revenues from the permanent school fund jumped 13.6 percent from the fiscal year last year?

A. That's correct. At the same time the average educational cost in the State of Texas went up over 25 percent.

March 11, 1980
VOLUME XX

[page 3023]

TESTIMONY OF CISSY SALINAS

EXAMINATION

By Mr. Florsheim

Q. Ms. Salinas, where are you currently employed?

A. At James Bonham Elementary.

Q. In the Dallas Independent School District?

A. Yes, sir.

Q. What is your job with the district?

A. Bilingual resource teacher.

[page 3025]

Q. How many different methods would you say that the district has used, since you have been there, in an attempt to institute an approach to bilingual education?

A. About five or six.

Q. Would you please list those and briefly describe for the court what they are.

A. Okay. We had a multi-age where we used several different grade levels together. We had K-2 where we had kindergarten, first grade children and second grade children in the same classroom. We went to K-2. We had Open Area, we had Team Teaching, we had ESL, and we had Pull-Out pgorams.

Q. How many of those did you actually participate in?

A. All of those.

Q. And which, in your estimation and experience, has been successful or unsuccessful?

A. Well, I guess the self-contained situation.

Q. Has been what? Successful?

A. Very successful.

Q. What about Team Teaching in a common area?

A. Team Teaching is difficult, because a lot of times you are dealing with teachers who have not been trained to teach in that type of situation, and there is a lot of problems there; and in Team Teaching, all the teachers are not certified to bilingually instruct.

Usually in a teaching situation of three teachers teaching together, maybe one of those teachers is certified bilingually, which means that teacher gets the bulk of the bilingual instruction, where the other two teachers basically teach in the normal situation.

So, you can see that the load is not being equally pulled, and there is a lot of problems.

There is a lot of teachers start putting up barriers, psychological and real barriers, and we get back into sort of a self-contained situation, which meant bo ebe open, and it sort of doesn't work too successfully.

[page 3076]

TESTIMONY OF EDWARD L. COWENS

Q. Mr. Cowens, where are you currently employed?

A. I'm employed with the Dallas Independent School District.

Q. And what is your current job position?

A. I am deputy associate superintendent, personnel services.

[page 3080]

Q. (By Mr. Florsheim) If I could just ask a more pointed question, I think I could reduce it.

Mr. Cowens, approximately how many persons do you use in your bilingual recruiting program as recruiters?

A. We use approximately – this year we will be using 17 people in our recruitment program.

Q. Do you advertise through various media, newspapers, publications of various kinds?

A. We do advertise in the media, the newspapers, the radio stations, and occasionally we get television coverage.

Q. Do you advertise throughout the nation?

A. Yes, we do.

Q. Do you visit campuses, education schools?

A. Yes, we do. We visit campuses, and we also set up shop in various cities in hotels in conjunction with our advertising and recruitment in that matter.

Q. Do you do this throughout the nation?

A. We do it in selected areas, areas of high concentration of bilingual persons.

Q. Let me ask you, do other states raid Texas for bilingual teachers?

A. Yes, sir, they do.

Q. Is California one of those states?

A. California is one of those states.

Q. Do they advertise in Dallas papers trying to get recruits out of Dallas?

A. Yes, sir, they do.

[page 3083]

Q. Do you have teachers who enter the bilingual context and leave frequently?

A. Yes, we do have.

Q. Do you happen to know why they choose not to remain in that particular field?

A. Well, some teachers who are bilingual find the matter of teaching in a bilingual setting somewhat to their dislike, because it does involve a bit of work.

Q. Is it more difficult?

A. It is more difficult.

[page 3093]

THE WITNESS: That's what I was talking about, Your Honor. I'm saying that there is a shortage of bilingual teachers that are employable for us.

Now, you have mentioned that you could go down on the border, what have you. We have gone down to the Rio Grande area, the Valley area, time and time again. We go almost three times a year. We have milked it dry.

Of course, there are Mexican-American teachers who are satisfied with their home environment. They don't want to move to an area that's unknown to them, where the way of life is somewhat different,

faster paced, into a community of strangers. They would much rather remain.

[page 3127]

Q. Now, in addition to Colorado, what states do you recruit in?

A. We recruit in 11 states, and we are, of course, increasing that number. Texas, Colorado, New Mexico, Arizona, Massachusetts, New Hampshire, Minnesota, Iowa, Arkansas, Louisiana, and so on and so on.

[page 3128]

Q. Just one last question. As a recruiter, would you recommend that Dalla hire poor teachers just to fill up a vacancy?

A. Dallas is committed to providing the best quality teacher available; and as far as employing poor teachers, I don't recommend the employment of poor teachers to fill a vacancy. It does the youngster more harm than good.

March 12, 1980
VOLUME XXI

[page 3132]

TESTIMONY OF COVEY T. OLIVER

COVEY T. OLIVER

was called as a witness, and after having first been duly sworn, testified upon his oath as follows:

[page 3132]

THE COURT: It's admitted.

MR. WILSON: I believe we have a stipulation from the Plaintiffs that Mr. Oliver is an expert in the field of international law.

[page 3158]

The Plaintiffs and the amicii imply that the President alone could and has by Mr. Carter's well-known general foreign policy support for foreign rights – human rights, excuse me, human rights – override a Texas allocation of State school funds. I overlook – leave some argumentative points out of here. I simply say that we have to think about whose money is involved in this case and make the homey point that if the Federals want these children educated, all they have to do is provide the tuition money.

[page 3232]

MR. LIGGETT: My statement is that undocumented aliens were counted in the 1970 Census and Title I funds are disbursed to states on the basis of that census.

A. I'm sorry, counsel. I can't help you on that. I don't know anything about that. All I know is just a simple old lawyer that the Federal Government hasn't so far as I can tell thrown its weight around fiscally with respect to this situation. And my personal view, if I may speak it is, as I said in the statement, is that the Federal Government should put its money where its mouth is with respect to this issue and pony up its share of the added costs that these children bear – that will impose upon all taxpayers in Texas. That's my personal view. You opened to that. It's not an expert view.

[page 3243]

TESTIMONY OF MR. ELPIDIO LIZCANO

Q. Mr. Lizcano, would you briefly, since the Court already has Your vita, give the Court the benefit of what your professional background is that's relevant to bilingual education and to your duties with the Houston Independent School District?

A. I've been an educator for about 21 years, and in that time –

THE COURT: Let me ask you this: Have you ever taught in public schools?

THE WITNESS: Yes, sir.

THE COURT: Where was that?

THE WITNESS: Laredo, Austin, Crystal City and here in Houston.

THE COURT: What grades did you teach, please, sir?

THE WITNESS: All grade levels.

THE COURT: Are you of Mexican-American descent?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

Q. You were Director of Bilingual Education in Crystal City?

A. That's correct.

Q. What is your present position with the Houston Independent School District?

A. Director of Recruitment, Personnel.

[page 3245]

Q. Where do you go to recruit your bilingual teachers, or where do you go to recruit your teachers?

A. All over the country.

[page 3246]

Q. What other effoirts do you utilize to increase your teacher corps in the bilingual area?

A. Well, this year we initiated – the District initiated the second mile plan, which includes stipends for bilingual teachers. They get an extra $500 for being a certified bilingual teacher with the Houston Independent School District.

[page 3247]

Q. Do you do any recruiting in the area in the high schools?

A. Well, the District has a high school program specifically for future bilingual teachers.

[page 3257]

Could you give me some idea of what impact you think it would have in the teacher recruitment area and in the needs of the Houston Independent School District if Houston were to get, for example, six to nine thousand limited English-speaking children suddenly or even over the next two or three years?

A. Obviously, we would even have a bigger shortage of bilingual teachers. There's not enough available at this point with what we're servicing right now. In fact, in the whole graduating class in the state, you know, almost is not enough to take care of the needs of what we would be needing here in Houston.

Q. If you doubled the number of children in the classroom and left a certified teacher in there and, say, an aide, do you think you'd be able to deliver a quality bilingual education?

A. That would not be the best type of approach at all. That would be hindering the students. That approch has been tried, to team teach and to put an aide, also, a bilingual aide with a monolingual teacher. You are cheating the kids.

March 13, 1980
VOLUME XXII

[page 3333]

TESTIMONY OF MR. WILLIAM CHAMBERS

Q. Mr. Chambers, even though your resume is in evidence could you briefly outline your background with the Immigration Service and the number of years and what you do?

A. Yes. I have been in the Immigration Service for slightly less than 30 years. I started off in the Border Patrol, and progressed through as an immigration inspector, supervisory position. I was assistant district director for Travel Control hearings here in Houston. I transferred from here to Dallas as district director in Dallas of slightly less than three years ago.

[page 3336]

During this period some 467 aliens whom we had apprehended were interviewed by Internal Revenue Service agents. They assessed from these 467 aliens, they assessed $56,411.30 in unpaid taxes.

They collected on the spot $34,415.39 for taxes.

This was primarily on the basis that aliens were declaring more dependent than they actually had. The would claim, say, four or five dependents, but upon interrogation by the Internal Revenue agents they determined they were not eligible to claim dependents, so consequently this was the reason for the taxes being assessed.

[page 3337]

"The United States Immigration Service does not enforce the Immigration laws as written."

Do you agree or disagree with that, and if so, why?

A. I agree that we do not enforce them as written to the degree anticipated by the laws. And this is primarily due to the fact that there are some new laws needed, but even if we had the new laws our resources are not sufficient to handle the job which we are involved with.

The Immigration Service is a worldwide organization. We have offices in all parts of the world. The appropriation for all of the Immigration Service is less than for the budget of the City of Dallas.

There are fewer Border Patrolmen on the 2,000-mile border between the United States and Mexico than there are policemen in Dallas, Texas.

[page 3340]

About what percentage of the people that you come into contact with who you deem to be here without documents or here illegally do you actually go through a deportation hearing for?

A. A very small percentage numbers-wise. Most of them when encountered admit alienage, admit deportability. And then they have a choice of going to a hearing before an immigration judge or accepting voluntary departure from the country. And most of them admit deportability and do elect departure under voluntary circumstances.

Q. And do you have any idea how many of the deportation cases that you actually take to deportation hearings you actually lose?

A. Well, inasmuch as we take a very small percentage to deportation hearings, we only take cases that are pretty much open and closed cases.

And, our percentage that are not found deportable is very low.

[page 3360]

TESTIMONY OF DR. ROBERT TIPTON

ROBERT TIPTON,

was called as a witness and, having been first duly sworn, testified as follows:

[page 3371]

Now essentially what this map shows then is the areas in which we have major teacher staffing problems in the State.

For example, on 10-8, the teacher-pupil ratio in Bilingual education programs you will notice that, for example, in region seven where we have four programs there are 439 children, four certified teachers – all of them, incidentally, at Tyler – three teachers on permits, for a student teacher ratio of certified teachers per children of 109.75 children per teacher; and using also the three people on permits, 62.71 children per teacher.

In region four, for example, using only – which is the Houston area here, using only certified teachers at 11,543 children and 340 teachers, we have a ratio of 33.95 children per teacher; with an additional 60 teachers on permits, the ratio drops to 28.86 children per teacher.

We could go through all the regions. You can look at that, sir, in 10-8.

Essentially this means that the bilingual programs in these areas indicated are already under tremendous pressures from just numbers of students.

So that additional children means that we have to conceive of other ways of extending the teachers' ability to deal with these children.

In some instances –

THE COURT: That's the orange areas?

THE WITNESS: Both orange and blue, or green on the small map.

THE COURT: All right.

THE WITNESS: One of our greatest problems is in these areas particularly we have teachers who may

teach as many as 60 children in the period of a day.

It is – as a teacher I can say this – it is extremely difficult to keep up with 60 children and where they are in all of their subjects and be able to fit the instruction to each child adequately with that many children passing through the classroom per day.

[page 3397]

programs at sixth through twelfth grade are permitted but are not funded by the State.

Q. (By Ms. Dasher) How many districts in the State have bilingual programs? Does 211 or 311 sound familiar, whichever one it is?

A. I have on this talley sheet 205. I believe that is correct.

Q. And how many districts are there in Texas, school districts, approximately?

A. Eleven hundred seven, I believe. It is in that neighborhood.

THE COURT: Is there any scientific reason why some children, or some people, have more difficulty in learning another language than others?

THE WITNESS: There probably is, but we don't know what it is. It is certainly an observation that in any group of people, whether it is first language or second language, certain children become much more proficient in the language than other children. Partially it may be early training, early exposure to the language.

[page 3434]

of this is not coordinated, then the Spanish-speaking teacher teaches arithmetic and the English-speaking teacher teaches something else. And how can we be sure that the English-speaking teacher is teaching the child to speak that kind of English with the kind of vocabulary that is required to express what is being taught in all the other subjects, for example, social studies?

Q. Well, it's my understanding that you want to get a certain number of teachers and that's based on how many ever student you have to serve?

A. That's true.

Q. So if you have two teachers, does that increase how many kids you have in the classroom?

A. Yes.

For example, assuming that we have an average of 30 children that are in a classroom in a self-contained situation, I would assume that if we had two teachers that we have an area that would hold 60 children. If you don't you have problem.s

Now, Team Teaching is good if the teachers work together, have the same sort of attitude toward the children and are both dedicated in the same way to the children. Methods don't have to be agreed, but the attitudes have to be the same. And they have to agree sometimes to disagree. If that's not there, then you have competition between the teachers. And you have developed, unfortunately, in all too many cases, a your kids and my kids attitude.

The English-speaking teacher who has a certain number of children of limited English-speaking ability in her group will really belong to that teacher over

there who speaks their language.

And while my English-speaking teacher teaches over there, they are really my students.

You have to break that attitude among teachers.

Now, the advantage is that if you can get two teachers that can work together, then the children can identify the language with the person. Now, this is possibly the first thing that children learn to do in terms of language.

My stepson, for example, spoke both Spanish and English from the time he was a child because there was a Spanish-speaking maid that kept him all the time while his mother was teaching. So

[page 3439]

Q. What in your opinion would be the effect on our bilingual education system if we added, oh, maybe 6,000 to 9,000 elementary children, for example, to a city like Houston, if they were LESAB children?

A. In the city of Houston it would be disastrous because they already have a 34 to one ratio of student to teacher ratio. They are already extending their teachers as far as they can extend them using non-traditional approaches.

[page 3444]

Q. So ever since there have been children of limited English-speaking ability?

A. Since the Republic.

Q. Do you know what the method of teaching children of

limited English-speaking ability was utilized in the schools throughout the State of Texas prior to 1972?

A. My own experience would be based on the three years during the Second World War that I was in the schools in the State of Texas, and essentially it was nothing more than a regular school system doing a regular school program in English with no special instruction or anything else.

Q. For clarification, could you tell me why it has taken the State of Texas in excess of 100 years to implement a bilingual program?

A. May I point out, sir, that it has not taken the State of Texas 100 years to implement the program.

We had bilingual education in the State of Texas with a number of languages up until the time of the First World War.

At the time of the First World War – it's very interesting – we had a law passed that required education and the administration of education be conducted in English because of the

[page 3481]

I cannot say we have a surplus of teachers. The fact is no matter how I take the figures I can show you that the State needs a minimum of 929 more bilingual teachers. It may be 1500 more. I don't know.

I can also say California, according to the people out there, needs 4,000 more teachers.

I know that from all over the United States recruiters come to our Texas colleges and universities having bilingual programs looking for bilingual teachers.

I don't think we have a surplus, and I think that it is only in cases where you look at figures like this, and do not take into consideration actual circumstances, that anyone can say that we have a surplus of teachers.

[page 3506]

though probably 95 to a hundred percent of the children in Rio Grande City are of a limited English-speaking ability, and that ratio is much too high and should be lowered.

Again that goes back to what we were talking about in previous cross-examination about taking into consideration local conditions

And in estimating that need, I have simply looked at numbers, not on adequacy of programs.

Q. Let me correct you because I intentionally misled you. I found on the page in the deposition – well, let me read the question and let you respond and see if you still agree with it.

This is my question to you: "I thought earlier on you testified that you believed in 90 percent or approximately 90 percent of the school districts, there were enrolled more than what you considered to be the optimum number of students."

And you response was, "No. I said 90 percent of the school was – we had adequate programs, at least 90 percent of the schools.

Do you still agree with the statement you made?

A. In talking about the programs, yes.

And, subsequent to that, I did produce the estimates based on the teacher-pupil ratios, which

[page 3508]

classroom group for instructional purposes.

Q. Has TEA made any assessment as to the, other than your figures which you produced for this trial, as to the shortage or lack of shortage of bilingual teachers in any other state other than Texas?

A. To my knowledge, I am the only one that has ever done this in the State of Texas.

In other states the only thing I know is what I quoted from Marjorie Broat, where she quoted a need of 4,000 teachers.

I do not know the basis of how she got that figure.

Q. Are you aware of the total amount of Federal dollars that go into bilingual education in the State of Texas?

A. No.

Q. Do you recall in your deposition stating at page 30, line 15, "If we have a shortage of teachers, as we have in many places, we may have Team Teaching where we have a mass of Spanish-speaking and English-speaking teachers to teach a large number of children."

Do you recall making that statement?

A. Yes.

Q. So it is a fact that Team Teaching is used as a methodology in the State of Texas?

A. Certainly. So is resource teaching.

Q. Isn't it also true that one teacher in the Team may in fact be monolingual solely in English?

A. This is true. This is the reason that we have to use it in cases where we have an inadequate supply of teachers because by the very nature of the thing, that teacher has a certain number of children and you can increase the ratio of limited English-speaking ability children to your bilingual teachers because the other teacher is taking up part of that by teaching all of the subject areas in English.

Now this is not as good an approach, as I have already testified, as a self-control classroom which then puts us back down to a lower ratio.

But where we have an inadequate supply of teachers, we have to use non-traditional approaches like Team Teaching, resource teaching, to attempt to provide at least some assistance, special assistance, for these children.

Q. From the standpoint of your expertise as an educator in bilingual education, could you explain why it is better in the various programs that you have now that you not have the optimum student-

[page 3515]

special assignment permits, short of the certification? How many teachers in the State of Texas have that?

A. The number I gave you was 881, I believe.

Q. And how many hours of training was required for those people to obtain that permit?

A. As I have already testified, the special assignment permit requires that they have six semester hours of training.

Q. And a normal teacher certification?

A. In the undergraduate program, we require 24 semester hours.

Q. Are teachers compensated during the 12 hours that they work towards that temporary permit?

A. No, sir, just as they're not compensated for any other program.

Q. Has TEA ever discussed, or have you in your job as attempting to facilitate an increase in the number of bilingual teachers, ever discussed the possibility of teaching – of supplementing those 12 hours for people, for teachers?

A. What do you mean by supplementing the 12 hours?

Q. I mean, providing them with some compensation for taking those 12 hours of additional training.

A. We have no legal authority to do so.

March 14, 1980
VOLUME XXIII

TESTIMONY OF
EDMUND T. EMMER

[page 36]

would not necessarily impair their effectiveness.

For teachers, however, whose management skills

are average – and there are a lot of average teachers, which doesn't mean they're not good teachers, but there are a lot average teachers whose management skills are less than perfect – it probably would affect their management capability. But there are some teachers whose skills would not necessarily be impaired. Disregarding the skill of the teacher for the moment, I would like to focus in on the characteristics of the children.

Is it sill your testimony that the addition of a large number of children might not necessarily affect adversely the classroom, but that it would depend on the characteristics of the children?

A. That's correct.

Q. That is still your testimony.

I believe your attorney just stated that you were not an expert in the characteristics particularly of undocumented children, is that correct, basically?

A. That's correct.

Q. In fact, I believe you told me, did you not, during your deposition that the data you were using

[page 55]

circumstances you would see much more management difficulty situations. And on top of that, effective classroom management, the teachers aren't trained bilingually or don't have techniques to deal with the children and then you will find again a much more difficult management situation.

Q. I believe you just stated, and I quote, that an effective manager may handle these things. Tell us what

techniques or what ways would such an effective manager use in coping with these things you have identified as difficulties.

A. *Well, first let me say I think an effective manager could handle increased numbers of students –*

Q. I see.

A. – and not necessarily all the problems you might drop upon that teacher. But the more effective manager develops systems to cope with constraints.

The teacher, if we are talking about great numbers of students, would probably spend a lot of time in teaching rules and procedures, would make sure that the class was with her, was able to function without her direct supervision before she started out on any kind of small group activity. We would find the more effective manager.

TESTIMONY OF
MR. MARK FLOLID

[page 85]

Have you ever done any studies with regard to utilization of the census with regard to Spanish people? Any other work you have done on that question?

A. Yes, several times.

Q. With regard to this particular study, did you state in your deposition and is it fair to state – the page – I'm looking at page 55, lines 12 through 14 – "purely my estimates are trying to pick up those that I consider illegal aliens or undocumented aliens in this population."

Do you recall making that statement in your deposition?

A. Yes.

Q. Do you recall making the statement that is at page – same page, page 55, line 16 through 19, "I just simply tried to come up with an estimate of those that I consider would be considered illegal – is that the proper term – in the Texas school system."

Do you recall that statement?

A. In the Texas school system? Yes, generally. Yes, I do remember that.

Q. Would it be fair to state that your task was to estimate the number of undocumented alien children

[page 104]

didn't have an answer to that.

MR. SCHEY: I apologize, Your Honor.

Q. Could you tell us just as you apprently in your study – you call this 111,000 potential undocumented Hispanic school age population?

A. That's correct.

Q. Do you know what you would call this population here?

A. I would label it the same.

Q. You would label this 80,000 potential Hispanic undocumented persons?

A. 1970.

Q. Does that suggest to you that if that were accurate that there was a large number of Hispanic students undocumented who maybe voluntarily are not going to school?

MS. DASHER: Your Honor, he's going through the same facts of evidence that we went through earlier.

MR. SCHEY: I may clarify it to Mr. Florsheim.

There's a study in which he is able to show there are 111,000 people out of school. The assumption he makes, that's one thing to do that, but his study calls those people undocumented children. Now if he can draw assumption about the 111,000 down in 1980 through his study – he's working with 1970 data. I assume he's making some assumption about who the 80,000 is. If he can't make assumption about the 80,000, I find it difficult to understand how he can make assumption about 1980 since this is all extrapolation and if there's error in identification, it's carried forward.

So I think I am entitled to ask him to explain to us what he assumes – how you would label this 80,000 group and why you would label it that way.

Q. Can you tell us why you would label that potential undocumented population?

A. Again, as I explained earlier, if you do the same procedure for the total population, you come up with similar results, so we are no longer speaking of total population. So the 111,000 is (inaudible) three million, and if you do this the studies I ran are characteristics of undocumented aliens.

Q. Would you speak up just a little?

A. The overwhelming majority of aliens tend to be of Spanish-speaking origin, I understand, in Texas. Thus if in fact I were to estimate a population of undocumented aliens, I would believe it would be in those categorized as the Spanish language, Spanish surnames – your common categories for identifying Hispanic population in the Southwest states. And in fact we do come up with similar results.

Q. Let's try to clarify what you're saying. You're saying this is just – this residue here is just for Hispanics, is that correct?

A. That's correct.

Q. This is just for Hispanics, is that correct?

A. That's correct.

Q. That is correct. You're saying if we do the same calculation right here for Spanish, blacks and whites, you're going to come out with the residue that is just a little different than this?

A. No, that's what I found in '75 through '80.

Q. And you are now making the assumption you would find the same thing for 1970, is that correct?

March 17, 1980
VOLUME XXIV

TESTIMONY OF
JAMES PETE WILLIAMS

[page 95]

JAMES PETE WILLIAMS,

was called as a witness by the defendants and, having been first duly sworn, testified as follows:

Q. Mr. Williams, the Court has your vitae. Would you just highlight your experience with reference to education and desegregation and the overlay between the law and those three fields.

A. Well, I'm a graduate of Texas Law School in '52. In '57 I commenced teaching in public schools, and in several short years acquired the teaching certificate and a Texas School Counselor's Certificate. During the '60s I did counseling work, public school work, college education work. I served as a counselor for the Gary Job Corps and ultimately became project administrator of TEDTAC, Texas Education Desegregation Technical Assistance Center.

Q. What has been you work recently – well, not necessarily recently, but what work have you been doing in the areas of desegregation and what role have you performed professionally?

A. In desegragation I commenced doing that kind of work with TECTAC and serving as a court appointed expert for purposes of presenting evidence or working plans or doing whatever the Court requested me to do. As of this year I'm doing that for Judge Justice in a couple of current cases. I have done some of it all through the decade.

Q. In what courts have you been a court appointed expert?

A. Judge William Taylor in Dallas.

Q. Is that the Dallas desegregation case?

A. The Dallas desegregation case. Before that, Judge Connally in Houston in the Houston desegregation case; Judge Singleton in the Crosby Independent School District case; Judge Dawkins in the Northern Parish of Louisiana. I did some work for a Mr. Wolfe in the Cisneros case and testified when this Court sat in Victoria. Judge Justice – I think that's it.

Q. Any places outside of Texas?

A. I wrote memorandums for the Court in the Davidson County case in Nashville. I did consultant work for the Nashville Metro School District after an order had been entered. I did not prepare the plan. And I wrote a memorandum for Judge Garretty in the Boston case.

[page 101]

Q. Are you familiar with the issues that are involved in this case with respect to what children are not being given a free education in Texas?

A. Yes, I am.

Q. In your opinion, what would be the effect of admitting additional minority students who are – and assume this, that they're are not subject to prediction or identification. What effect would that have, a court order desegregation plan over the next two years in Houston, let's say?

A. You said over the next two years, and you said in Houston?

Q. Yes.

A. It would just invalidate whatever plan is in effect. There's no money.

THE COURT: You don't mean invalidate, you meant make it difficult to implement.

THE WITNESS: Yes, sir, I didn't mean legally to change anything, but the implementation of it would be impossible is what I mean.

[page 105]

Q. Would an addition of a substantial number of one-race minorities to the inner cities of Houston and Dallas cause what you have called resegregation?

A. That's the purpose of my answer a little bit ago when you said in two years' time. You just couldn't do that without making it more intensely resegregated, if that's the word you all are using.

Q. What do you feel would be the impact in a smaller district where maybe you have three elementary schools and one junior high school under the existing desegregation order such as 5281?

A. Well, there's a classic situation that I like to think a lot of people never think about because of the 1100 school districts in Texas, maybe seven or eight hundred of them are like that.

And you bring in a dozen families, 12 to 15 to 20 brand new families, either because of a nuclear plant or because of the outcome in this case, and you have in your school system, if you're nip and tuck as the TEA folks say, if you're running about 60 percent, then you've got a campus under 5281 that is not creating an objection according the Judge Justice's order.

If you bring in 10 to 15 families as there are minority students, and they all go to one elementary school,

that campus is going to become 66, 67, 68 percent immediately. When that happens, the full force of 5281 applies to that district. There's a whole bunch of things they're supposed to do. There's a whole bunch of things TEA is supposed to do. There is no way to say that any particular minority group moving into a small town can just be absorbed and doesn't make any difference. Under the existing U.S. versus Texas, it makes a big difference.

[page 114]

Q. Are there any special problems created or that you have considered or worked with over the years that deal with the – if there are any tensions in the brown-black community when you put those minorities in the schools with the whites?

A. Oh, goodness. My first experience with tension between brown and black was with the Gary Job Corps. That was a very intense experience. I learned that they are, along with all the rest of us, capable of having incredibly intense negative racial feelings towards each other. My next real life experience with it was right here in Houston because I was determined not to pair two elementary schools because – for instance, one was all black and one was all Mexican-American – and of course, normally, all the schools in the Houston District at that time were all something. They were all white or all black or all Mexican-American. I was determined not to pair a black and a brown school, as we call it. I was on very shaky ground because this court had not entered any judgment in the Cisneros case, and I was actually ordered by the Justice Department to consider the data only in the context of black and white and that Mexican-Americans would be considered Caucasian. That's the way the plan had to be. I just ignored the order and prepared one that considered it on a tri-ethnic basis, and

to the extent that we could, we tried to make things even between the three. Then, the next choice was not to put a totally black and totally brown school system together because of the intense difficulties that creates. I've maintained that policy for the next 11 years.

[page 116)

Q. Limiting your answer to Arizona, has Arizona experienced any problems with their educational system by virtue of their proximity to Mexico, if you know?

A. I've served as a counsel to Senator Anne Lindeman who is chairman of the Education Committee in the Arizona Senate, for two reasons, to help her try to figure out how to cope with some of this problem that we're talking about in this case --

Q. What do you mean by "this problem"?

A. She's often pointed to me the city of Nogales as a great example and also she refers at times to Phoenix as a great example of where people just come and go. They are unable to identify who they are, who they belong to and where they are going to be next year. Senator Lindeman's version of it would be that it is an intense problem, and I've been dealing with her for three years.

She attempted in Senate Bill 1008 about a year and a half ago to establish a constitutional compact between California, Arizona, New Mexico and Texas. I'm not talking about that source of silly willy-nilly called the Border Commission, 507 Commission or something. I don't even know the name of it. I'm talking about a constitutional compact that the four states would have entered into under the Federal Constitution. She got a good response in the Senate and

was fixing to – she got a joint – what do you call it – a bipartisan committee to adopt it all except one vote. She though she was off and running, and the government killed it.

Q. What was the thrust of the constitutional compact?

A. It was hopefully going to attempt to deal with several major problems, one of which was the education of undocumented alien students in the four states, how to cope with that, particularly in the border districts.

[page 125)

Q. So you would feel that it would not be a valid approach to try to determine where the children who are the subject of this litigation would impact on the State?

A. It would certainly be one approach. It would be my estimate, if you were to ask me, when you come to the City of Houston, they're going to live out around Roosevelt, but after that, if you said, "And are they always going to be there, shall we build a new school at Roosevelt," if I were a superintendent of HISD, I would take a dim view of any plan of that sort because they might all be gone next year.

[page 129]

Q. (By Mr. Schey) Can you tell us what the impact is, and this is just looking at Hispanic schools, they conclude the very – this is out of February 7, 1980 – they conclude they're underenrolled by 2,500 students. What is the impact of that underenrollment on desegregation plans?

A. I can certainly testify to that because I never had a plan before me yet that didn't present what I used to

call magnificently beautiful enticing data. It's like, "Ah, we can make this work." I've been through this in Houston. I've been through this in Dallas. They're overbuilt, and we're going to put the folks in the right place, and we're going to prove they can do it. If we make them do it, I want you to know that it is incredibly difficult. You can't just take a list like this and say there is going to be 175 students at Highlands because that's apparently the number of classroom seats that are not occupied. The cafeteria may not take those 175 students. They may be teaching four lunch periods right now and be on their knees trying to operate a school there. You have to go to the building. You have to see if 175 students can be served there, and that is not determined by vacant seats.

[page 138]

Q. (By Mr. Schey) Do you understand my question, sir? Given the fact that you already see all these problems with enforcement of the desegregation orders which are being caused by black students, by brown students, by white flight, et cetera, I'm just wondering if the additional problems you see being caused when we bring in another portion of minority students justifies keeping those students out of the schools?

A. I wrote a memorandum in 1976 for Senator Lindeman and the Education Commissioner of the State recommending that they be excluded. I would write it again today. I would exclude them.

Q. Could you just explain the basis for that decision?

A. We have a very definite amount of resource available. We have arrived at a point in history, and history is my hobby although I don't claim to be an expert, where we cannot sustain any further drain on that resource from anybody. I doesn't have anything to do

with the very charitable friends to the South. We can't sustain it from the Canadians, either. I think as an administrator or as a lawyer or as a taxpayer, you arrive at a point where you simply say, "Enough is enough, we'll do what we can with what we have." That's exactly what I'm trying to say; I would exclude them.

If, in fact, they are going to be here, that's a Federal problem. If, in fact, they're going to be educated, that's a Federal problem. We have educated the Indians, and Texas hasn't paid for that. I think that's appropriately done, and perhaps that's the way to do it for people that have no documentation. It's a Federal problem.

Q. (By Mr. Schey) Okay. Just if you would take the hypothetical -- or I present this testimony to you as a hypothetical, his studies have indicated that there are approximately 10,000, a total of 10,000 undocumented children in the State of Texas. If, in fact, if you just take that as a hypothetical, if, in fact, there are 10,000 children in the State of Texas who are undocumented and assuming that they were spread out throughout the state such -- namely, that you would locate them in areas currently populated by Hispanics fairly evenly throughout the State, based on those numbers, are you able to state what the impact would be on desegregation in the State of Texas?

[page 146]

A. Taking it as a hypothetical, I couldn't possibly give you an answer that would serve you any purpose. I don't for a minute believe that there are only 10,000 in the State. Of course, I'm not going -- I've told you I don't have a survey, and I'm not an expert on where

prople are this afternoon, but I can't deal with that as a hypothetical. They are not also going to be spread out over the State. When you say something like that, it's –

[page 163]

Q. You mentioned earlier – you said that if you were asked to decide whether or not undocumented children should be educated, you would decide to exclude them because as you see it, it's a question of resources and the pull is finite and you can only push and pull so far?

A. That was part of my reason for excluding them, yes.

Q. So, if the idea behind that that you more or less have to save money, and in order to save money, you could sort of draw the line somewhere, is that what you were getting at?

A. I'm not saving money. It's not in that context. I'm 51 years old, and all my life to me the vision of the Statue of Liberty is one literally of what I have read in the inscription looking at it face to face, send us all, send us everything, the poor, the weak, whatever, we'll take care of it. Those days are finished. That's over with. We've arrived at a point in American history where we can no longer sustain that. We cannot take the dissident populations from any country. McDade County in Florida is a gigantic example of educational problems because we took the problems that presumably, I'm just paraphrasing here, that possibly Castro is delighted not to have to cope with. We took all the refugees from Cuba in one spot because that's where they could go to. I would not have been so inhumane as to have pushed them back in the ocean, but I do suggest that the point at which this country can no longer continue to do that, whether 9,000 Iranians the

last three months or 10,000 more undocumented workers next year.

We have arrived at that point. It's finished. We can no longer sustain the reception of any group of people in this country. We've got to stop and breathe and plan how we're going to preserve a workable system before the inner cities of Houston, the inner cities of Cleveland, the inner cities of Dallas fall down upon us.

Q. Mr. Williams, is it true that school systems have more or less uniformaly offered administrative cost difficulties, statistical problems to – it's not statistical – space problems and, let's say – what else did you mention – transportation problems, shortages of buses, is it true that these kind of problems have been offered since the beginning of desegregation, that they occurred more or less over and over?

A. I'm one of these rare people that's in a position to say that I found out the hard way that they are true problems. Sure, I used to see that as a superintendent's line as to why he didn't want to let any of the black folks into his school. I helped push a lot of black folks into those schools, but in doing so, I found out and I'm honest enough to say that we diluted the system badly, and at times we endangered even the physical life of students. We did it all in the name of equal access, which I shall die for if ever asked to do so. But I shall not tell you that that is equal educational opportunity because it is not. That's been a first, and I do think those superintendents were entitled to more integrity than I used to given them ten years ago.

[page 169]

Q. Do you think the children of undocumented immigrants would be excluded from education – public

education in the State of Texas if their nationality or origin was, say, Irish, as opposed to Mexican-American?

THE COURT: Even on St. Patrick's Day?

A. It's my testimony, sir, that if they were undocumented, they just simply should be excluded. I don't care what they are.

Q. I'm asking you: Do you think they would be excluded now?

A. It's a hypothetical in the context of my answering you, and my answer is that I think they would and I would exclude them. You're trying to ask me, I suppose, is if they were white, would they be excluded. I would suspect that they would be getting the same treatment they're getting right now, and that is, everybody is looking the other direction. Everybody is waiting for George to solve the problem. To me, it's a Federal problem whether Irish, white or black or from Cuba. They should be educated, apparently, in a Federal system that's to be established to take care of the Federal problem, or they should be sent home.

March 18, 1980
VOLUME XXV

TESTIMONY OF
NORMA VILLARREAL

[page 3]

NORMA VILLARREAL

was called as a witness and, after having been first duly sworn, testified upon her oath as follows:

DIRECT EXAMINATION
BY MS. DASHER:

Q. Would you tell the Judge exactly what your educational background is and whether you are certified?

THE COURT: Let me get her name first.

What is your name, please?

THE WITNESS: Norma Villarreal, V-i-l-l-a-r-r-e-a-l.

THE COURT: All right, Ms. Dasher.

Q. You are teaching in the Brownsville school sright now. Is that correct?

A. Yes, I am.

Q. What teaching certificates and endorsements do you hold?

A. I have a BS certificate from Pan American University, a bilingual certificate and kindergarten endorsement.

[page 6]

Q. Have you had any particular experience with children who enter the school year at different times, and how do you handle those if you have that kind of experience?

A. Yes. We have this going on all throughout the year. They come in slowly. We have got some children coming in in October, others coming in in January; and what we do is we go ahead and kind of stop what we are doing and try and take time out to catch these children up with the others.

Q. And does that take time away from the other children?

A. Yes, it does take time away from the others, because you have to drop everything, give other children individual instruction when possible.

TESTIMONY OF
LON C. WHEELER

[page 51]

A. All right. My name is Lon C. Wheeler. I am now Executive Director of Attendance, Transfer, Demographic and Pupil Assistance Department.

I have a Bachelor of Science degree with North Texas State University, and an administrative education Master's degree from the University of Houston.

[page 52]

Q. Do you enforce the HISD policy with regard to admission of undocumented aliens?

A. Yes, we do.

[page 53]

Q. What, generally, is that policy?

A. That policy is one in which if they show evidence of the Immigration Department having knowledge they are present, we allow them to enter school.

March 19, 1980
VOLUME XXVI

TESTIMONY OF MICHAEL SAY

[page 45]

MICHAEL SAY, having been previously duly sworn, resumed the stand and testified further upon his oath as follows:

[page 47]

Q. In regard, if those schools were impacted as we have suggested they might be, would there be any effect on your Title I federal funding?

A. There would certainly be implications for how we handle our ESEA Title I funding for disadvantaged schools because 18 of the 41 schools on this impact list in fact are Title I campuses. On those campuses there is a consideration that we have to give very close attention to and that is the matter of comparability.

Title I campuses must remain comparable in order for us to continue to receive the Title I funds. We receive about $15 million in Title I funds annually.

What this means is that expenditures per pupil on those campuses out of state and local funds must be equal to or greater than the average expenditure per pupil on non-Title I campuses.

In addition, the pupil-professional ratio, number of pupils on the campus to the relationship of that number to the number of professionals on the campus must be less than or equal to the average pupil-professional ratio on non-Title I campuses.

The implications are that if you attempted to handle the impact of students by simply adding students to classes on those campuses you would run into a problem in comparability. In fact, as soon as that ratio of students to professionals exceeds the average in the District you would have to add additional professional staff to those campuses simply to keep them comparable in order to continue to receive the Title I funds.

It is a complicated issue. There would be implications.

[page 57]

Q. Dr. Say, there has been a lot of talk in this courtroom about the declining enrollment in the Houston Independent School District. Has there been any corresponding decline in the H.I.S.D. budget over the past several years?

A. No, sir, there has not. That is a situation that we have to continue to explain, particularly to taxpayers when it is at the budget making time of the year.

We have declined in enrollment over the last 10 years approximately 50,000 students. Over that same period of time you have had of course the effect of inflation. You have had the effect of lower pupil-teacher ration over the years. You have had the tremendous effect of the supplementary programs that have been added in the district to meet the needs of specific student populations, expansion of programs to meet the need of the handicapped, programs to meet the need of limited English speaking ability students, many, many programs in basic skills working with a smaller pupil-professional ratio to work with students who are functioning far below grade level attempting to bring those scores up.

There have been many steps taken over this period of time to improve the quality of education in the Houston School District. As a result there definitely has not been a decline in the cost or in the budget even though there has been a decline in student population.

[page 131]

Q. I would like to move to a comparability problem. You mentioned with respect to Title I funds. Does comparability require that the student-professional ratio be under the district wide average or equal to the district wide average?

A. Equal to or less than - the purpil-professional ratio, equal to or less than the pupil-professional ratio on the average for non-Title I campuses.

Q. What is the purpose of comparability laws as you understand them?

A. To insure that you provide the same level of local and state support to disadvantaged students that you would otherwise provide and that the Federal funding is supplementary support as opposed to supplanting or replacing what you would normally spend out of local funds.

Q. Does that seem to be a reasonable requirement to you as an educator?

A. Except for some technicalities in that a Title I campus, individual campus, may be a smaller campus than the average size in the district. Under those circumstances because it's not - excuse me. I am using the opposite example that I should.

If it's a larger campus than the average, then because of the cost effectiveness of the larger campus,

the cost per pupil would be less. Nevertheless, you can't take advantage of that. You have to go ahead and add to additional local money to get it at or above the average expenditure in the district.

TESTIMONY OF REPRESENTATIVE TONY POLUMBO

[page 142]

TONY POLUMBO

was called as a witness by the Defendants and, having been first duly sworn, testified as follows:

EXAMINATION

By Mr. Wilson

Q. Would you just briefly tell the court what your position is in State Government at this time?

A. I am a State Representative from northeast Harris County currently serving the end of my third term. I am a member on the Business and Industry Committee and the Public Education Committee.

Q. Representative Polumbo, have you ever introduced a bill into the House of Representatives dealing with undocumented aliens?

A. Yes. I did. I introduced a bill in 1977 and '79 both.

[page 143]

Q. Could you just briefly explain or possibly read the bill for the court?

A. I can explain the bill starting – it's the same bill that I introduced in the '77 session also. It simply holds to

the fact that if an employer knowingly hires an illegal alien with no exceptions it is a felony offense, third degree felony.

[page 144]

Q. From your personal knowledge what was the basis of the opposition to your bill?

A. I believe the basis of opposition was fear of the discrimination on surnames that the Mexican-American citizens of our country were concerned that perhaps there would be too much scrutiny in the citizens actually getting jobs and I believe that's where the major concern was.

I believe another concern on a minor basis was that folks that were hiring them were a little concerned about not having to be able to hire them.

March 21, 1980
VOLUME XXVII

[page 2]

TESTIMONY OF JAMES L. DUDERSTADT

JAMES L. DUDERSTADT

was called as a witness and, after having first been duly sworn, testified upon his oath as follows:

[page 3]

Q. Mr. Duderstadt, the Court will very shortly have a copy of your vitae, but would you briefly summarize what your academic background is and what your employment has been over the last 20 years or so?

A. I hold a Bachelor's degree from Chico State College in Chico, California; a Master's degree from the University of Denver, Denver, Colorado; and, completed all work except for the dissertation for a Doctor of Philosophy at the University of Denver, Denver, Colorado.

I have a certificate of broadcasting from the National Broadcasting Company in Stanford University in Palo Alto, California.

My employment has largely been in fields of education, with three years spent in the Department of State, and about four or five years in private business at which time I was also involved in education during those two, otherwise it has been teaching and/or administrative work in colleges and public school systems.

Q. And during the course of your employment have you spent some time in the Virgin Islands, and would you describe what your employment was there?

A. I spent the last twelve years in the Virgin Islands. I was employed by the College of the Virgin Islands and by the Department of Education in the Virgin Islands.

And, also, I was in private business during that time, but during the time I was in private business I was also working as an advisor for the Commissioner of Education.

Q. Did you teach in public schools at all while you were there?

A. Yes, I did.

THE COURT: What grade did you teach?

THE WITNESS: From seventh grade to twelfth grade.

Q. (By Ms. Dasher) Now, Mr. Duderstadt, would you describe for the Court what transpired in the educational system of the Virgin Islands starting in early, approximately, 1968?

A. In 1968, in the fall of 1968, we were still under the usual standards, that is, we were not accepting the alien students into school at that time. Our enrollment in 1968 was 12,292 as of opening of the school in the fall of 1968.

In 1969 we began to accept aliens into the school, and our enrollment jumped from the fall of '68 to the fall of '69 from 12,292 to 14,270.

[page 8]

THE WITNESS: In view of what was just said, I would say I could shorten things.

During the period from 1968-69 until 1976-77 the school enrollment jumped from the 11 – well, roughly 12,000 bracket, 11,887, 12,292 are the two successive years, '67 and '68, to 25,571 in 1977.

These figures were obtained for verification for my own information from Mr. Komise, who I said was the Director of the Department of Statistics for the Virgin Islands Department of Education.

Q. (By Ms. Dasher) Now, Mr. Duderstadt, during that period of time from 1968 and ending when you left the Islands, what occurred that is based on your personal knowledge in the schools and to the schools in the Virgin Islands?

A. Well, during this time I was working very closely with the schools either in teaching or administration or in an advisory capacity. And when we had a court ruling which required that we continue to admit aliens into the school, this ruling essentially was for the documented aliens, although at that time the schools were opened up to all aliens.

The influx of students from the, what we refer to as the down islands, being the islands that are to the east and south of the Virgin Islands, was tremendous.

And it wasn't just a question of the students who were there at the time the ruling transpired, but we had a heavy, heavy influx of students each year after that.

[page 10]

THE WITNESS: I was there, and part of my work had to do with the registration of students.

And when they came into school – and, particularly into the Nazareth Bay High School, a junior high school – and we had students arriving undocumented not really sure who they were supposed to say was their parent or guardian or where they were living, coming from, such islands as Dominique, the British Virgin Islands, St. Kitts, Nevis, Anguilla, Antiqua, Trinidad, Tobago, Grenada – largely from all of the English-speaking islands of the Carribbean. We had very, very few students from the French, Dutch or Spanish-speaking islands, extremely few.

The influx of students into the islands, of course, first of all caused a tremendous shortage of classrooms because we had – we were short when it began. And after the – this rule – after this ruling, and we had to admit the alien students, we had to open build-

ings that had been previous condemned such as Lincoln School. We were using old World War II barracks for classrooms. We could not obtain sufficient numbers of teachers. We had many classes that were being held by teacher aides who had no more than a high school education.

We had many classes that simply didn't have a classroom teacher.

THE COURT: How did those teacher aides do with a high school education?

THE WITNESS: Very poorly in particularly teaching high school students, because they simply did not have the background.

Even in the elementary school it was very unsuccessful.

My son was an A and B student when we moved him to Houston two and a half years ago. He attended – came here into the Mark Twain Elementary School. He had not had an achievement test or placement test though his reports were highly satisfactory.

When he entered Mark Twain instead of 90's and 100's on tests, he was making 10's and 15's.

And he was given an achievement test to see where he would rate. He was rated fourth grade, second month.

Now within a year's time – we were lucky, we had a very fine teacher at that school and he kept my son at the school for 30, 45 minutes most of the year.

By the end of the year my son was back into the top percentage of his class, which indicated there was

nothing wrong with his ability as nothing had been indicated in the Islands. He simply wasn't getting it. The reason being, many of our schools, his included – I should say most of the schools – were reduced to half-day sessions. One group came at 8:00 o'clock in the morning and went until 12:00, had lunch from 12:00 to 1:00 with the students who were coming for the afternoon session. The afternoon sessions had classes from 1:00 until 5:00.

So they were reduced by just about half the time that they were allowed to spend with the teacher.

In high school our class, including five minutes for change of class, had been an hour. It was reduced to 35 minutes. There is no way – speaking as a teacher – there is no way I can cover this 30 minutes what I would normally cover in 55 minutes.

[page 14]

We had a very large number of the aliens coming in that were coming from islands where the school system was not comparable to that in the U.S. Virgin Islands. And we had students who were 10, 12, 14 years old in the first, second and third grades, which created some very strong educational problems.

Many of these students were so far back that they were put into special education classes, depriving the citizen, U.S. citizen in the Islands of special education because they were better prepared than the others, so they were pushed up in the regular classes where many of the aliens took the special education classes, which created again learning hazards for us.

Q. Mr. Duderstadt, the Virgin Islands by virtue of not being a state has somewhat of a different financial arrangement with the Federal Government than most states, does it not?

A. Yes. We receive all the same Federal programs that are offered to the states here. In other words, the Federal funds for education, for housing, all of these programs we have.

The major difference is in that we pay Federal income tax in the Virgin Islands, that dollar stays in the Virgin Islands. It is also matched dollar for dollar by the Government, Federal Government in Washington. So when I pay a thousand dollars of income tax, that meant the Virgin Islands got $2,000.

So that was the basic difference there.

In spite of this the Islands right now is on the verge of bankruptcy.

THE COURT: Why is that?

THE WITNESS: Because of tremendously heavy increases in cost of education for one thing, and welfare is the second.

[page 17]

Q. (By Ms. Dasher) One last question. You did not have to deal with a bilingual program, did you?

A. No. The studnets who were from the Spanish-speaking islands largely went inot Puerto Rico.

[page 20]

Q. Do you now know that that court decision had nothing to do with undocumented children?

A. The court decision evidently had nothing to do with undocumented children, but we did accept them as a result of that.

Q. Are you aware that the court decision involves solely documented children, children documented by the Immigration and Naturalization Service?

A. Yes, I am aware of that, but those documented children were frequently there on a six weeks' to two months' visitor's visa, and when that visa expired they were allowed to stay.

[page 38]

Q. Do you have any idea how large the State of Texas is?

A. Yes, I have.

I also have an idea of the proximity of the State of Texas and the ease of admission into the State of Texas compared to crossing anywhere from 10 to several hundred miles of open sea to get to the Virgin Islands.

[page 44]

I might also point out – this is really relative to one of the questions I was just asked, that the total population, English-speaking population, where we draw students in the Virgin Islands from the down islands is approximately three million compared with approximately 68 million population, say, in Mexico. So while we are smaller, what we are drawing from is much smaller, Texas is larger but the potential draw is much larger, also.

The movement of students into the Islands increased annually largely because it was a better school system. And people in the down islands, if they could give their children a better education – for the same reason I came here – were the same reasons they were sending them to the Virgin Islands for a better education for their children.

And I strongly suspect that we will have the same type influx here, so it wasn't a question of those that were here at the moment. It was opening the gate for many, many, many additionals coming in.

March 24, 1980
VOLUME XXVIII

TESTIMONY OF ESTEVAN FLORES

[page 99]

Q. Mr. Flores, would you please state your full name for the record and please spell it for the court reporter?

A. Yes. My name is Estevan Timothy Flores, E-s-t-e-v-a-n T-i-m-o-t-h-y F-l-o-r-e-s.

Q. And how are you currently employed?

A. I'm currently employed by the Department of Vehicle Sciences, Pan American University, Edinburg, Texas.

Q. What courses do you teach at the Pan American University?

A. I teach a course on the Mexican-American people, taught social problems, also teaching a course on the 1980 census, experimental internship program.

[page 100]

Q. (By Mr. Torres) Mr. Flores, did you co-author a field study of Mexican undocumented immigrants entitled "Social, Economic and Demographic Characteristics of Undocumented Mexicans in the Houston Labor Market, A Preliminary Report" dated March, 1980, and marked as Plaintiffs' Exhibit No. 207?

A. Yes, I did.

[page 104]

A. Yes. The preliminary report basically has two parts. The first part covers the sample of 138 in its entirety. The appendix, Pages 65 on is a separate analysis of the subsample, those 105 parents of the children.

Q. For the purpose of this suit, can you please give us your findings as to the 105 sample population derived from the parents of undocumented immigrant children not in public school?

A. Yes.

Q. According to you study, what is the average length of stay in the United States by parents of undocumented immigrant children?

A. Those in our sample, the average length of stay here in the U.S. is approximately 6.5 years.

Q. How does this result compare with other studies that you have seen?

A. Could you repear the question?

Q. My question is, according to your study, what is the average length of stay in the United States by parents of undocumented immigrant children? That is, what is the length of time, average length of time that they have been here in the United States?

A. That was 6.5 years.

[page 123]

Q. (By Ms. Dasher) While they are looking for those, I will ask you a general question.

I noticed in your study and in the report that you wrote, that you indicated that you found out that the employees, these undocumented workers, were begin treated very well by their employers in the main. Isn't that what you determined?

A. They stated that they were treated similar to other workers.

[page 127]

Q. If you will look at 024, no, 024 reports four children enrolled in the public schools of Mexico, and that this person wants to bring them up here to go to school. Is that accurate?

A. There are three or four different questions of children. What question are you referring to?

Q. Why don't you tell me which numbers deal with that.

A. If you are referring to Question 16, four Mexico and zero in the United States.

Q. Question 20?

A. Yes. What about it?

Q. Does that say what I said it said, which is that they wanted to bring their children up here to go to school?

A. Yes, that's correct.

Q. If you will look at 025, Page 4, Question No. 30, "Why did you leave your native country? Specify."

The answer, "To work, education for children, keep family together."

Is that accurate?

A. Yes. To work, education for children, keep family together.

Q. If you will look at 006 –

A. Can I go back to that one question? Did you want to know how we coded that?

Q. No. I wanted to know if it was accurate.

A. Okay.

Q. Would you look at question No. 50, Page 7?

A. Is this still on 25?

Q. This is 006.

A. I don't have it. The question number, please.

Q. Question 50, Page 7, indicates that the primary reason this person came to the United States was for school.

A. The first time that they came to the United States.

Q. And they have six children, looking at Page 1, Question 7A.

A. No. That's not correct.

Q. Well, how many children does this person have, Question No. 12?

A. Question No. 12 indicates that there are six children of the present marriage.

Q. So, there could be more?

A. Correct. That's why there is a Question 13 which asks of previous marriages.

Now, in terms of Question 17, which asks how many are living within the United States, the answer is five.

Q. So, there is still some in Mexico to bring over. Is that right?

A. Yes. No, that's not right. We have no indication that that's what is going to happen.

Q. You don't think the Mexican people would like to keep their families together?

A. Yes, they would.

[page 131]

Q. Let's assume that the ages of the children are school age, and there are some in Mexico, as id evidenced by the questionnaire where the gentleman says he has four children in Mexico in school that he wants to bring over here.

A. In the previous questionnaire, yes.

Q. And you don't think that suggests, along with your statement, that the Mexican people would like to keep their families together, that we would try and unify these two groups of families by bringing them to the United States?

A. We had a few of our respondents say that, yes. The majority did not say that.

Q. Did any of them say, "I will not bring my children to the United States to unite my family"?

A. No. We didn't ask that question.

Q. Then, it isn't really surprising that you wouldn't get an answer to it, is it?

March 25, 1980
VOLUME XXIX

TESTIMONY OF
MR. ALBERT CORTEZ

[page 13]

Q. Finally, I would just like to ask you about four or five questions on financing. Have you had an opportunity to read the testimony of Mr. Bynum from the Texas Education Agency, his testimony in this case.

A. Yes, sir, I have.

Q. Do you recall that Mr. Bynum estimates the cost of educating or do you recall he mentions the annual cost of $96 million throughout his testimony?

A. Yes, sir, I do.

Q. Are you award how he calculated the $96 million?

A. Yes, sir. He took an estimated state allocation of $800 per pupil, multiplied that by 120,000 children and came up with 96 million.

Q. So he was assuming an impact of 120,000 students?

A. Yes, sir, he was.

Q. Do you have an exhibit with you today – I believe it's Plaintiff's Exhibit 454 which discusses the projected surplus in the State of Texas for the end of this biennium?

A. Yes, sir.

Q. What is the comptroller of the State of Texas currently projecting as the surplus at the end of the current biennium?

A. He is projecting according to this document

[page 15]

Q. Have you attempted to calculate what the surplus would be in the State of Texas if there are only 60,000 undocumented children who would enroll and again utilizing Mr. Bynum's figures on the per pupil expenditure?

A. Yes, sir. Again, using Mr. Bynum's figures and the projected surplus I have come up with an estimate of 276 million still remaining in surplus.

Q. That 276 million which would still remain in the Texas surplus you simply calculated that figure by taking the figure of $800 per student, multiplying by 60,000 and then deducting from the comptroller's estimated surplus of 324 million?

A. Yes, sir. That's the process.

Q. Have you followed the same process to calculate what the State of Texas will have as a surplus assuming that there are only 20,000 undocumented children at the end of this biennium?

A. Yes, sir. Again, assuming the same process, if you take the 20,000 students, multiply by 800 per student you come up with a statewide cost of I believe it was $16 million. You subtract that from the 324 million projected surplus and you wind up with 308 million dollars still available.